94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
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EXTENDING THE EXPORT ADMINISTRATION ACT

SEPTEMBER 2, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MORGAN, from the Committee on International Relations, submitted the following

REPORT

Together with

SUPPLEMENTAL AND ADDITIONAL VIEWS

[To accompany H.R. 15377]

The Committee on International Relations to whom was referred the bill (H.R. 15377) to amend the Export Administration Act of 1969, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 20, immediately after line 12, add the following new section:

NUCLEAR EXPORTS

SEC. 18. The Export Administration Act of 1969 is amended by adding at the end thereof the following new section:

"NUCLEAR EXPORTS

"SEC. 17. (a) (1) The Congress finds that the export by the United States of nuclear material, equipment, and devices, if not properly regulated, could allow countries to come unacceptably close to a nuclear weapon capability, thereby adversely affecting international stability, the foreign policy objectives of the United States, and undermining the principle of nuclear nonproliferation agreed to by the United States as a signatory to the Treaty on the Non-Proliferation of Nuclear Weapons.

"(2) The Congress finds that nuclear export activities which enable countries to possess strategically significant quantities of unirradiated, readily fissionable material are inherently unsafe.

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"(3) It is, therefore, the purpose of this section to implement the policies stated in paragraphs (1) and (2) of section 3 of this Act by regulating the export of nuclear material, equipment, and devices which could prove detrimental to United States national security and foreign policy objectives.

"(b)(1) No agreement for cooperation providing for the export of any nuclear material, equipment, or devices for civil uses may be entered into with any foreign country, group of countries, or international organization, and no amendment to or renewal of any such agreement may be agreed to, unless—

"(A) the provisions of the agreement concerning the reprocessing of special nuclear material supplied by the United States will apply equally to all special nuclear material produced through the use of any nuclear reactor transferred under such agreement; and

"(B) the recipient country, group of countries, or international organization, has agreed to permit the International Atomic Energy Agency to report to the United States, upon a request by the United States, on the status of all inventories of plutonium, uranium 233, and highly enriched uranium possessed by that country, group of countries, or international organization and subject to International Atomic Energy Agency safeguards.

"(2) The Secretary of State shall undertake consultations with all parties to agreements for cooperation existing on the date of enactment of this section in order to seek inclusion in such agreements of the provisions described in paragraphs (1)(A) and (1)(B) of this subsection.

"(3)(A) No license may be issued for the export of any nuclear material, equipment, or devices pursuant to an agreement for cooperation unless the recipient country, group of countries, or international organization, has agreed that the material, equipment, and devices subject to that agreement will not be used for any nuclear explosive device, regardless of how the device itself is intended to be used.

"(B) Subparagraph (A) of this paragraph shall take effect at the end of the one year period beginning on the date of enactment of this section.

"(4) In any case in which a party to any agreement for cooperation seeks to reprocess special nuclear material produced through the use of any nuclear material, equipment, or devices supplied by the United States, the Secretary of State may only determine that safeguards can be applied effectively to such reprocessing if he finds that the reliable detection of any diversion and the timely warning to the United States of such diversion will occur well in advance of the time at which that party could transform strategic quantities of diverted nuclear material into explosire nuclear devices.".

Purpose

The purpose of H.R. 15377 is to extend the authority of the Export Administration Act of 1969 and to make various changes and additions to the act, including provisions aimed at improving the export licensing process, strengthening the U.S. policy against compliance with foreign boycotts, and protecting U.S. foreign policy and national security interests by strengthening controls on the export of U.S. nuclear technology and fuel.

Committee Action

On May 19, 1975, the Secretary of Commerce forwarded to the Speaker of the House Executive Communication 1089, transmitting draft legislation providing for a 3-year extension of the authority of the Export Administration Act of 1969. This communication was referred to the Committee on International Relations. On June 5, 1975, Chairman Morgan introduced the draft legislation as H.R. 7665.

Full committee action on H.R. 7665 was preceded by extensive hearings by several of the committee's subcommittees. The Subcommittee on International Trade and Commerce held hearings on March 6, 12, 13, and December 11, 1975, on "Discriminatory Arab Pressure on U.S. Business" and on March 11, 15, 24 and 30, 1976, on "Export Licensing of Advanced Technology: A Review." The Subcommittee on International Security and Scientific Affairs held hearings October 21, 23, 28, 30, November 4, 5, 1975, and June 7, 1976, on the problems of nuclear proliferation and the reprocessing of nuclear fuel.

The full committee held hearings on the Export Administration Act on June 8, 9, 10, 11, 15, 16, August 10 and 24, 1976. Included among the witnesses were Members of Congress, officials from various executive departments, and representatives from business, labor, and academia. H.R. 7665 and various amendments to the Export Administration Act of 1969 were considered by the committee on August 26, 30, and September 1, 1976. On September 1, the committee voted out a clean bill, H.R. 15377, by voice vote, with an amendment.

Background (Legislative History)

Under the Committee Reform Amendment of 1974 (H. Res. 988), the Committee on International Relations received jurisdiction over export controls. Prior to this change, jurisdiction over export controls lay with the Committee on Banking and Currency. H.R. 15377 represents the first exercise of the Committee on International Relations' authority over export controls.

The principal authority for the imposition of export controls is derived from the Export Administration Act of 1969. That act replaced the Export Control Act of 1949.

The committee undertook hearings on the Export Administration Act in June and August of 1976 to consider extension of the Export Administration Act beyond its expiration date of September 30, 1976 and to consider various suggestions as to how the act could be strengthened and the export licensing process improved.

Improvement of the Export Licensing Process

Sections 1–13 are aimed principally at improving the export licensing process. All of these sections, except section 2, were developed by Hon. Jonathan Bingham, chairman of the Subcommittee on International Trade and Commerce, pursuant to hearings before his subcommittee.

One hearing witness—a noted political scientist—characterized the export control and licensing system as a "shambles." While that may be somewhat of an overstatement, major problems clearly exist. Some of these problems undoubtedly stem from lack of clarity in the act itself. Over the years, the Export Administration Act and its predecessor statute, the Export Control Act, have been successively amended. Inconsistent and even contradictory language has crept into the act, both confusing and leaving without sufficient guidance those who must administer export controls.

The committee attempts in this bill to begin the task of clarifying and making more consistent the policies and procedures of the act. The particular amendments it has approved address several broad concerns:

1. *Right of export.*—Under the original Export Control Act of 1949, virtually all trade with Communist countries was restricted. Gradually, changes in national policy have induced a loosening of such restrictions to the point where controls are now focused on items and commodities that might contribute to another country's military potential to the detriment of the national security of the United States. But the list of controlled items remains long because of the assumption from which it began—that everything is controlled. Items have had to be decontrolled with the burden of proof always on those seeking to remove an item from controls. This has created a presumption which, before 1949, would have seemed heretical—that exporting is a privilege granted by the bureaucracy only to the extent that good reason is shown that it should be granted, rather than that it is a right, like other rights, should be abridged only for specific and overriding reasons, such as protection of the national security.

The difference in presumptions is more than theoretical. It deeply affects the manner in which U.S. export control programs are administered and may well be at the bottom of many of the problems of these programs. Several of the committee amendments begin to move toward a treatment of exports more as a right than a privilege. Section 4 directs the administration to further limit unilateral export controls. In section 8, the committee directs a simplification of export regulations which ultimately will require simplification of the list itself and an end to the premise that all exports are subject to controls.

2. *Commodities and countries.*—Both the nature of the commodity and the country to which it is proposed to be exported are necessary considerations in export control decisions. Heaviest emphasis, however, both in the law and in practice, has long been on countries—particularly Communist countries. Section 9 of the committee bill attempts to reduce emphasis on Communist countries as the focus of export controls. Such a change recognizes that Communist countries may vary in the extent to which they constitute a threat to the national security of the United States, and that non-Communist countries may also constitute such a threat.

Implicit in this reduction of emphasis on countries as the basis for export controls is need to put greater emphasis on the nature of commodities to be exported. Greater use of available manpower and funds to identify the commodities most likely to contribute to foreign threats to the national security of the United States if exported, and a focusing of export licensing procedures on such commodities, would contribute substantially both to increased efficiency and effectiveness in the export control process.

3. "*Sunshine.*"—The fact that the export control process has, for a quarter century, been almost entirely closed to public and congressional scrutiny is another contributing factor to the problems with export control programs. While there is legitimate need for confidentiality to protect both trade and national security secrets, secrecy appears to have been carried farther than necessary. For that reason, section 5 gives export license applicants an opportunity under certain conditions to respond to objections raised by licensing officials. Section 6 reaffirms the right of Congress to obtain information acquired under the act. Section 7 requires that the administration account for its action pursuant to recommendations of the technical advisory committees consisting of business representatives. Section 8 seeks to make the export regulation more intelligible to the average businessman.

FOREIGN BOYCOTTS

A major focus of attention during the committee's hearings and markup was the Arab boycott of Israel. This boycott takes three forms. The primary boycott involves Arab countries and companies refusing to do business with Israel and Israeli companies. This form falls outside U.S. jurisdiction and is usually recognized as a legitimate type of economic warfare under international law and practice. The United States has in the past and is currently imposing such boycotts on several countries.

The secondary boycott involves the Arab Central Boycott Committee and Arab nations refusing to do business with third-country companies that deal with Israel. This type of boycott is also outside U.S. jurisdiction, except to the extent that the U.S. Government regulates U.S. company compliance with the boycott regulations, e.g., report and discrimination provisions.

The tertiary boycott involves U.S. companies refusing to do business with other U.S. companies or individuals because they fail to comply with the Arab boycott regulations or because of race, religion, or national origin. This type of boycott is clearly against the spirit and intent of U.S. law, both the civil rights and equal opportunity laws and the antitrust laws.

In 1965 the Congress adopted an amendment to the Export Control Act of 1949 (now found in sec. 3(5) and 4(b)(1) of the Export Administration Act) stating that it is U.S. policy to oppose boycotts fostered by foreign countries on other countries friendly to the United States and to encourage U.S. companies to refuse to cooperate with such boycotts. It is the committee's judgment that this policy statement has not been effective in attempting to deal with the Arab boycott of Israel and that a stronger stand against the boycott is now required.

The purpose of section 14 is to provide such a stance principally through prohibiting U.S. citizens and companies from complying with either a secondary or tertiary boycott request.

COMMITTEE AMENDMENT—NUCLEAR EXPORTS

Nuclear proliferation presents serious problems for United States foreign policy. A nuclear-proliferated world threatens not only our national security objectives but also international stability. In recognition of this interrelationship between U.S. foreign policy needs and the spread of nuclear weapons, the International Relations Committee has sought and considered solutions to the problem of nuclear proliferation.

In October 1975, the Subcommittee on International Security and Scientific Affairs held hearings concerning "Nuclear Proliferation: Future U.S. Foreign Policy Implications." The legislative products of those hearings was House Concurrent Resolution 570, a concurrent resolution with respect to certain arms control and disarmament negotiations. This legislation was passed in the House of Representatives on May 3, 1976.

During the mark-up of House Concurrent Resolution 570, the Subcommittee on International Security and Scientific Affairs deleted a reference in the resolution to multinational reprocessing centers, electing not to advocate a technology which, even in a multinational context, appeared to pose many dangers. To explore further the issue of nuclear reprocessing and proliferation, the subcommittee and the full International Relations Committee continued the earlier hearings with additional witnesses in June and August 1976.

Several important conclusions emerged from these hearings:

(1) Nuclear reprocessing which provides access to separated plutonium greatly increases the danger of proliferation.

Donald Cotter, Assistant-Secretary for Atomic Energy, Department of Defense, referred to the reprocessing of material as a "key element" in the control of proliferation. Dr. Cotter stated that "a country that possesses the capability for reprocessing spent fuel from power reactors also possesses a latent capability to use plutonium byproduct in nuclear weapons." From the perspective of the Department of Defense, the spread of nuclear weapons to an increasing number of countries presents grave national security problems for the United States. The Department, therefore, supports efforts to establish strong controls to inhibit national reprocessing facilities.

(2) Multinational reprocessing centers do not offer an effective solution to the problem of nuclear proliferation.

Dr. Henry Rowen, former President of the Rand Corp., stated that suggestions for multinationally owned reprocessing plants "really miss the point." "It is the product of these plants in the form of fuels which contain plutonium, which is the problem. If they (the fuels) are circulated very widely, plutonium would be readily accessible to governments," Dr. Rowen testified.

(3) Reprocessing spent reactor fuel is not economically viable at this time.

A committee witness, Prof. Albert Wohlstetter, of the University of Chicago, has concluded in his recent study for the Arms Control and Disarmament Agency, "Moving Toward Life in a Nuclear Armed Crowd?", that the economics of reprocessing spent fuel look poor now and trends show that the costs of reprocessing and recycling will increase in the future. Reprocessing cannot deliver reductions in cost either in terms of total energy consumption or in terms of kilowatt hour costs. Professor Wohlstetter also cast grave doubts on the capacity to conserve significant quantities of uranium through reprocessing. Even the slight conservation possible, however, would not compensate for the dangers of proliferation involved.

(4) Safeguards wihch are adequate and effective when applied to nuclear reactors are inadequate and ineffective when applied to nuclear reprocessing facilities and separated plutonium.

On May 6, 1975, the President transmitted to Congress, pursuant to section 14 of the Export Administration Act of 1974, a report on the adequacy of laws and regulations to prevent the proliferation of nuclear capability for nonpeaceful purposes. In the discussion of international nuclear safeguards, the President stated:

> The international safeguards system deters diversion by the threat of early detection of diversions should they occur at the national level and by the political consequences resulting from reporting of diversions to the international community.

The international safeguards system, when applied to nuclear reactors, does provide for early detection. The same safeguards, however, when applied to reprocessing and to separated plutonium, cannot provide for early detection.

Safeguards, as they now exist, are essentially sophisticated inspection and accounting systems, designed to discover discrepancies between the amount of nuclear material a nation should have and the amount it does have. Their purpose is to detect clandestine diversion of material from peaceful to military ends. The current safeguard system, however, does not prevent a nation from renouncing its peaceful uses assurances and appropriating its nuclear material stockpiles for nonpeaceful purposes. As Professor Wohlstetter points out, the danger exists that governments will soon be able to acquire, without violating existing agreements, large stockpiles of nuclear fuel and material that can be transformed within days into nuclear weapons, should the decision be made.

Commissioner Victor Gilinsky of the Nuclear Regulatory Commission, in discussing the essence of effective safeguards, stated before the Committee:

> The rationale of safeguards, and this is the critical point, is that the discovery by the international community of a breach of peaceful uses assurances, well before the violater can attain an actual nuclear weapons capability, exposes him to risks of international reaction which may frustrate his purpose.

A nation that possesses nuclear reactors and spent fuel is a long time and many difficult steps away from obtaining materials suitable for insertion into a bomb. Should that nation decide to disregard its peaceful uses assurances, it will still require many months before completion of a bomb. These months translate into a warning time for the international community. Warning time heightens the risk involved for the violator, making that nation more susceptible to discovery, exposure, criticism, and sanctions. Warning time permits a responsible supplier with the opportunity to apply sanctions.

However, a nation which has access to separated plutonium is continuously only a matter of days away from the ability to manufacture an explosive device. Safeguards which act as accounting devices offer little protection in this latter scenario because they provide essentially no warning time of the manufacture of a nuclear bomb once a diversion has occurred and, therefore, no opportunity for the United States or the international community to take effective action against a violator of peaceful uses assurances. The absence of warning time before the violator's completion of a bomb greatly increases the possibility of proliferation.

(5) In the face of the growing proliferation problem, U.S. policy has been inconsistent and unclear.

Although U.S. policy has stated that the materials it exports for peaceful uses are not to be diverted to military ends, a U.S. failure to insist upon India's recognition of this fact facilitated India's use of U.S. heavy water in the manufacture of a nuclear explosive device in 1974. Unlike Canada, which suspended and then terminated its nuclear exports to India after the 1974 explosion, the United States has continued its nuclear export program with India. On the other hand, a South Korean decision to purchase reprocessing facilities from France met severe U.S. opposition, forcing a cancellation of the sale. It is an inconsistent policy which treats a U.S. ally more harshly than a nonallied country. Furthermore, although the United States has not exported reprocessing facilities because of the dangers involved, it has left other countries with the impression that they will receive U.S. permission to reprocess U.S.-supplied fuel.

(6) A firm U.S. definition of its nuclear export policy would increase the possibility for an international nuclear export agreement among the nuclear supplier nations.

The United States, which has long enjoyed the lion's share of the world nuclear export market, quickly arouses the commercial suspicions of other supplier nations when it attempts to convince those nations to control their own exports. Only when we clearly enunciate U.S. nuclear export policy will these commercial suspicions diminish. It is difficult, for instance, to convince France to refrain from exporting reprocessing facilities as long as U.S. intentions concerning its future export of reprocessing plants and its willingness to permit other nations to reprocess U.S.-supplied fuel remains undefined.

Some argue that more restrictive U.S. export policies will only result in our being driven out of the nuclear market, thereby eroding further our influence over both supplier and recipient states. This argument is too narrowly commercial. It assumes that the supplier states—most of whom are our military allies—share no common interest with us in reducing the ease with which other states can acquire threatening nuclear weapons capabilities. This is clearly not the case. Moreover, this argument also assumes that there is no longer a place for leadership by persuasion and example. As the nation which stimulated today's broad distribution of critical nuclear knowledge and technology, we have a special obligation to provide enlightened leadership in this area.

The effect of the amendment is to assure that nuclear safeguards with respect to reprocessing will be effective. Responding to the President's definition of safeguards as devices that provide for "early detection of diversions," the amendment requires that safeguards must provide early detection of a diversion—in other words, detection of diversion well in advance of the time at which a bomb could be completed. Since the present safeguards system does not provide for early detection of diversions of separated plutonium, the effect of the amendment would be to prohibit the U.S. export of reprocessing facilities and the reprocessing of U.S.-supplied fuel by foreign countries until such time as tighter safeguards can be designed. In addition, it requires that the United States retain control over all the nuclear material that comes out of the reactors we export. This assures that other countries will not be able to circumvent the tighter U.S. controls on reprocessing simply by making use of fuel from a non-United States source. It also requires that all countries and organizations to which the United States exports nuclear equipment and materials agree not to use these materials and equipment to make nuclear explosive devices of any sort.

Other Matters

The Committee also had brought to its attention during consideration of the extension of the Export Administration Act the problem of the outflow of nuclear technology that occurs from the education and training of foreign nationals in this country in the field of nuclear technology. The Committee expressed an interest in becoming better informed on the significance of such education and training on the development of a capability of other countries to produce nuclear weapons. The Committee has not addressed this concern in H.R. 15377. However, the Committee will continue to pursue its interest in this matter and is hopeful that the executive will begin to consider the implications arising from the training of foreign nations in this country in the area of nuclear technology.

The Committee also considered the problem of the inhumane treatment of horses that are shipped abroad for the purpose of slaughter. They almost always travel by sea, reportedly under deplorable conditions. Little effort is made to insure their safety and many die during the voyage. The Committee is seriously concerned with this unacceptable treatment of horses and calls on the executive to use its existing authorities to correct this inhumanity.

Section-by-Section Analysis

SECTION 1—EXTENSION OF THE ACT

Section 1 extends the Export Administration Act for 1 year—from its current expiration date of September 30, 1976, to September 30, 1977.

The committee modified the administration's request for a 3-year extension for several reasons. Subcommittee and committee hearings revealed considerable dissatisfaction with the administration of the export control program. The committee expects that changes in the act proposed in this legislation will ease some of those problems. But others seem likely to be influenced only by close and continuing congressional oversight over the export control process, rather than by legislation. The committee feels closer oversight can be achieved with a 1-year extension that would be possible with a longer extension of the act.

Sections 11 and 13 of this legislation, discussed in greater detail below, call for detailed administration studies of particularly difficult aspects of the export control program—publication of sensitive technical information and multilateral export controls. The committee hopes to have the benefit of these studies and an opportunity to consider legislative remedies to these problems before providing any longer extension of the act.

It should be noted that there is strong consensus within the committee that an effective and efficient export control program is necessary both now and for the foreseeable future. Extension of the act for only 1 year, therefore, reflects a desire on the part of the committee to improve the program rather than in any way to question the long-term need for it.

SECTION 2—PENALTIES

Section 2 increases maximum fines for violations of the act, and increases administrative flexibility in collecting civil fines in conjunction with export license suspensions and probations.

The deterrent effects of fines presently authorized by the Export Administration Act of 1969 have been severely eroded by inflation. In addition, experience with these sanctions suggests that, particularly for large exporters and export transactions, they are not sufficient to deter violations. In the case of large exports, at least, it has proved possible to "pad" contracts to cover the costs of any fines that might be incurred.

The committee concurs with administration recommendations that these penalties be increased. Under this legislation maximum first-offense criminal fines would be increased $10,000 to $25,000, and for subsequent offenses from $20,000 to $50,000.

Section 9(g) of the bill would make criminal penalties presently reserved for violations involving illegal exports to Communist-dominated countries applicable more broadly to such exports to any country which threatens the national security of the United States. Maximum fines for such violations would be increased under this section of the bill from $20,000 to $50,000.

SECTION 3—AUTHORIZATION OF APPROPRIATION

Section 3 would require funds to carry out export control functions to be authorized specifically by law. There is currently no language in the act specifically authorizing funds to carry out the purposes of the act. In previous years, funds have been appropriated annually without undergoing an authorizing process. Since funds for export control programs have already been appropriated for fiscal year 1977, specific authorization would be required under this section beginning with fiscal year 1978.

This provision is consistent with rule XXI(2) of the rules of the House which stipulates that no funds shall be appropriated in a general appropriations bill "for any expenditure not previously authorized by law." Establishment of a regular authorizing process for export control programs would be consistent with the practice followed by the committee with respect to programs of the Department of State and other agencies and functions under its jurisdiction. While it is anticipated that funding authorizations would be approved initially on an annual basis, longer term authorizations could be provided if and when the committee approves longer term extensions of the act.

Like the 1-year extension recommended in section 2, periodic specific authorization of funds for export control programs will better enable the committee and the Congress to provide close oversight to this important activity and to insure that the Appropriations Committee has the guidance necessary to evaluate the Commerce Department's budget requests for export control programs.

SECTION 4—FOREIGN AVAILABILITY

This section amends section 4(b) of the act by repealing obsolete language and clarifying the language governing control of the export from the United States of goods freely available from other countries.

Paragraphs (2) through (4) of section 4(b) of the act, which were added in 1972, called for a review of the Commodity Control List with a view to removing unilateral export controls on items freely available from other countries, especially those for which there are significant potential export markets, and for a special report by the Secretary of Commerce on actions taken to implement this provision. The required actions were taken and the special report submitted in 1973, and these paragraphs are now obsolete. They are repealed by paragraph (1) of this section of the bill.

At the same time, the committee feels that the foreign availability language of section 4(b)(2) should be made a permanent part of the law. One of the most severe flaws in the export-licensing system is the prohibition on export from the United States of items freely available from other countries. As a general policy, no purpose is served by this practice except to transfer business from American companies to their foreign competitors. Yet in section 4(b)(1), which contains the basic authorities granted to the President under the act, the stated policy is precisely that the President may impose national security controls on items "regardless of their availability" from other countries. Since 1972 the act has existed with this provision allowing unilateral controls followed by another provision directing their removal.

The foreign availability language of section 4(b)(2) of the bill states policy as it should be: That goods freely available elsewhere shall not be controlled for export from the United States unless it is demonstrated that the absence of controls would damage the national security. Such an approach would protect both the national security and commercial interests. Paragraph (2) of this section of the bill inserts this language in section 4(b)(1), in place of the current foreign availability language, as one of the continuing authorities of the act.

This amendment reverses the presumption in the section to clarify and strengthen the intent that export controls should not be applied on items available from other countries, except for overriding national security reasons.

SECTION 5—PERIOD FOR ACTION ON EXPORT LICENSE APPLICATIONS

This section amends section 4(g) of the act to provide: (1) That any export license application not decided within 90 days is "deemed to be approved and the license shall be issued" unless a finding is made that additional time is required and the applicant notified in writing of the specific reasons for the delay and given an estimate of when the decision shall be made; (2) that when an application is not decided within 90 days the applicant shall "be specifically informed in writing of questions * * * and negative considerations or recommendations" which came up in the review process and given an opportunity to respond.

Section 4(g) of the act, which was added in 1974, resulted from congressional concern over inordinate delays in the export-licensing process, and clearly expresses the intent of Congress that licenses be approved within 90 days except in unusual circumstances. Apparently, however, the language of section 4(g) is not strong enough, because applications still languish in the bureaucracy for months. For example, a study conducted by a Presidential task force shows the following: (1) A random sample of 34 relatively simple applications which did not have to be referred to the formal interagency review process took an average of 93 days to decide; (2) a random sample of computer applications referred to the Department of Defense under section 4(h) of the act took an average of 4 months to decide; (3) in 1975, 1,105 applications, which included nearly 20 percent of the Communist-destination applications, took more than the statutory 90 days to decide, and 18 took over a year. Typically, objections to an export license application are raised in the confines of the bureaucracy; the applicant is neither meaningfully informed of the causes of the delay nor given a chance to respond.

The purpose of paragraph (1) of this section is to put an end to the practice of retaining license applications in the bureaucracy for long periods of time without justifying the delay. This provision creates a legally binding presumption that applications not decided within the statutory limit of 90 days are considered approved and the applicant is entitled to a license, unless the Secretary of Commerce or other responsible official makes the required finding that more time is needed and justifies it to the applicant. If the applicant has heard no response to his application after 90 days, it is the committee's assumption that he would inquire of the Department why no license or notice had been issued. However, if necessary, he may seek a writ of mandamus directing its issuance. Should it come to that, the burden of proof would be on the administration to show why it should not be directed to issue the license forthwith.

It must be emphasized that the purpose of this provision is not to require undue haste in complex licensing decisions to the possible detriment of the national security. The administration can prolong any licensing decision as long as it considers necessary by simply making the necessary finding required by the law. It must also be emphasized that this provision does not authorize automatic shipment after 90 days if the applicant receives no notification regarding his application. If that were the case, lost applications and denials would result in inadvertent and possibly damaging exports. This provision does not authorize shipment without a license of items which by law require a license. The requirement that the applicant obtain a license before he exports the items in question constitutes an absolute safeguard against the possibility of inadvertent exports due to administrative or postal failure. But if the administration cannot satisfy the applicant or show in court that failure to notify was due to inadvertence, the court may direct issuance of the license.

Paragraph (2) of this section introduces an element of "due process" into the export-licensing procedure. It provides that in those cases where the administration makes the required finding that more than 90 days will be needed to reach a decision on an application, the applicant shall have an opportunity to confront and seek to counter objections raised by licensing official. This provision guards, for example, against the possibility that the objection to the application is based on a misunderstanding or misinterpretation of the documentation submitted by the applicant. Again, the administration's right to take as long as necessary to reach its decision, and to deny applications when necessary, is in no way abridged. All that is required is that the administration be to some minimal degree accountable for its actions.

Paragraph (2) also contains a limited authorization to withhold information from the applicant on national security grounds. It is the intent of the committee that this authority not be invoked routinely, but only when absolutely necessary, and that applicants with the required security clearance be deemed to have a "need-to-know" such classified information pertinent to the licensing decision as may be necessary for effectuating the purposes of this paragraph.

Finally, paragraph (2) is designed to add to the existing right of administrative appeal of negative licensing decisions, a right to be heard during licensing deliberations on those particularly difficult cases which take more than 90 days to decide. It is not meant to preclude efforts by the administration to keep the business sector of the Nation as fully and currently informed as possible of the consideration involved in all licensing decisions.

It is the intent of the committee by this section to stimulate whatever administrative reform may be necessary to insure the most expeditious processing of export license applications consistent with the national security of the United States.

SECTION 6—AVAILABILITY OF INFORMATION TO CONGRESS

This section amends section 7(c) of the act to: (1) Reaffirm congressional intent that the secrecy provisions of the act do not abridge the inherent right of Congress to acquire information obtained under the act; (2) require the provision of such information upon request to any committee or subcommittee of Congress; (3) provide appropriate safeguards to protect the confidentiality of information submitted to Congress by stipulating that Congress shall receive confidential information under the same constraints that apply to the Secretary of Commerce under the current law, i.e., the information shall not be disclosed unless the committee or subcommittee determines that withholding it would be contrary to the national interest.

Section 7(c) currently provides that:

> No department, agency, or official exercising any functions under this act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest.

The administration interprets this language as applying to the disclosure of information to Congress. The Department of Commerce has refused to provide specific information obtained under the act to Congress except upon the stipulated national interest determination by the Secretary or upon receipt of a waiver of confidentiality by the firm supplying the information, and except under conditions specified by the Department. Last year former Secretary Morton submitted Arab boycott information to the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, only under threat of contempt proceedings, and only after a long attempt to place restrictions on the use the subcommittee could make of the information. This year the Department refused to testify before the International Relations Subcommittee on International Trade and Commerce—even in executive session—on allegations that machine tools licensed for sale to the Soviet Union had been instrumental in Soviet MIRV production, until it obtained a release from the company which made the sale.

The committee finds it inconceivable that Congress intended by section 7(c) to deny itself access to such information as it might later deem necessary for the effective exercise of its legislative and oversight responsibilities, to delegate to the administration the authority to determine the disposition by Congress of such information, or to give private industry a veto over the provision of such information. The committee concurs in the statement by Hon. John Moss, chairman of the Commerce Subcommittee on Oversight and Investigations, on the basis of testimony by leading experts on constitutional law, that: "Section 7(c) does not in any way refer to the Congress and no reasonable interpretation of that section could support the position that Congress by implication had surrendered its legislative and oversight authority under article I of the Constitution."

This amendment should not be necessary. It is made necessary only by the decision of the administration to interpret section 7(c) in a manner inconsistent with the intent of Congress. The committee presumes that the rights of Congress reaffirmed by this amendment already exist and would exist without this amendment. The addition of this language to this statute is not meant to imply that the absence of similar language in other statutes in any way limits the right of Congress to acquire information.

SECTION 7—TECHNICAL ADVISORY COMMITTEES

This section amends section 5(c)(2) of the act by striking out an obsolete sentence and inserting in its place a new sentence requiring that the Secretary of Commerce include in his semiannual reports to Congress an accounting and analysis of the consultations undertaken with the technical advisory committees, the use made of their advice, and their contributions to carrying out the purposes of the act.

Industry-government technical advisory committees (TAC's) were authorized as part of the 1972 amendments to the act to advise the Department of Commerce on technical matters, foreign availability, and licensing procedures, and in general to facilitate communication between the business and government sectors. In view of industry complaints that the recommendations of the TAC's are not taken seriously, the committee perceives a need for more complete information on the accomplishment of the objectives of this provision.

SECTION 8—SIMPLIFICATION OF EXPORT REGULATIONS

This section amends section 7 of the act by adding a new subsection providing for a review of the Export Administration Regulations with a view to simplifying them, and a report to Congress on the results.

The regulations currently consume some 400 pages, of which over 100 are taken up with the Commodity Control List itself and its interpretations. Mastery of these complex and constantly changing regulations is costly for any business and is particularly difficult for small businesses which cannot afford to maintain staffs of experts on export regulations. Testimony suggests that much noncompliance is probably inadvertent, the result of an inability to determine what the requirements are. This provision directs the Secretary of Commerce to see what can be done to simplify the regulations so as to facilitate compliance and reduce its cost.

SECTION 9—CONTROL OF EXPORTS FOR NATIONAL SECURITY PURPOSES

This section amends section 4(h) and 6(b) of the act to bring them into conformity with the basic purposes and policies of the act as a whole, thereby providing the administration with more coherent policy guidance. This is accomplished by removing specific references to communist countries, and by providing stricter guidelines for restricting exports on national security grounds.

Section 4(h) of the act was added in 1974. It directs the Secretary of Defense to review proposed exports to any Communist country and to recommend that an export be disapproved if he determines that it "will significantly increase the military capability of such country." The committee recognizes that it is reasonable to give the Secretary of Defense a special role in reviewing exports on national security grounds; this section of the bill preserves that role. However, the committee believes that this authority should be stated in terms which conform to the national security purposes of the act as a whole which, as stated in section 3(1), are "to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States."

That language suggests, and the committee perceives, no reason for limiting the Secretary's role under section 4(h) to Communist-country exports. Other exports have national security implications as well, and it makes sense for the Secretary to address those implications also. Furthermore, that language provides a stricter standard for restricting exports on national security grounds: the export must not only significantly increase the military potential of the recipient country, but must do so in a way which would prove detrimental to the national security of the United States. Currently, section 4(h) requires that only the first of those two tests be met, thus, in effect, authorizing the restriction on national security grounds of exports which would not in fact affect the national security.

In short, this section of the bill amends section 4(h) of the act by (1) broadening the authority of the Secretary of Defense to review exports on national security grounds by authorizing him to do so for exports "to any nation to which exports are restricted for national security purposes", but (2) at the same time, narrowing that authority to those cases where he determines that a national security danger really exists.

Section 6(b) of the act provides felony penalties for exports in willful violation of the act "with knowledge that such exports will be used for the benefit of any Communist-dominated nation". Again, it is the view of the committee that exports to Communist nations in violation of the act are not necessarily more serious than exports to other nations in violation of the act. Accordingly, and in conformity with the amendments to section 4(h) of the act, the committee bill provides felony penalties for exports in willful violation of the act with knowledge that such exports will be used for the benefit of any "country to which exports are restricted for national security or foreign policy purposes". Essentially, this provision makes the felony provisions available for willful and knowing violations of the national security and foreign policy provisions of the act.

It cannot be emphasized too strongly that the intent of this section is neither to increase the number of cases subject to review by the Secretary of Defense nor to further restrict exports on national security grounds. Either result would be a violation of the committee's intent, for that intent is precisely the contrary. Testimony suggests that in applying national security controls, the Department of Defense needs to move away from a country orientation and toward a commodity orientation—that is, to pay less attention to the destination of an item and more attention to the basic capabilities of the item itself. It is not good enough to say that exports are restricted to communist countries but everything else goes. The Secretary needs to develop better criteria for determining which exports should be controlled on national security grounds. It is the committee's intent that the Secretary develop and implement such criteria during the period for which the act is extended by this bill. It is the committee's expectation that such criteria will have the effect of both narrowing and tightening national security controls.

SECTION 10—REPEAL OF TITLE II OF THE MUTUAL DEFENSE ASSISTANCE CONTROL ACT (BATTLE ACT)

This section repeals title II of the Mutual Defense Assistance Control Act of 1951, popularly known as the Battle Act. This title provides for multilateral controls on the export to Communist countries of nonmilitary strategic items. The committee finds, and the Department of State, which administers the Battle Act, concurs, that the authorities of this title are obsolete and superseded by the Export Administration Act.

SECTION 11—EXPORTS OF TECHNICAL INFORMATION

This section adds a new subsection (j) to section 4 of the act, providing (1) for the reporting to the Secretary of Commerce of technology exchange agreements entered into with countries to which exports are controlled for national security or foreign policy purposes, and the monitoring of technology transfers under such agreements by the Secretary, and (2) for a study by the Secretary of the problem of the transfer of sensitive national security information by means of scientific publications and similar means of public dissemination.

Testimony, particularly by the General Accounting Office, has indicated that significant technology transfer from the United States takes place by means not subject to the export licensing process, especially through the consummation and implementation of technology exchange agreements. The committee is also aware of some concern, perhaps most notably expressed by Dr. Fred C. Iklé, Director of the Arms Control and Disarmament Agency, that sensitive national security information may reach unintended destinations in scientific papers. It is the intent of these provisions not to prejudge the severity of these problems, much less to solve them, but merely to provide for the acquisition of the information necessary for determining the dimensions of the problems and for developing solutions, if and as appropriate. As the very language of this section makes clear, the committee is fully cognizant of the First Amendment implications of these provisions and has no intention of violating constitutional rights of freedom of expression.

SECTION 12—SEMIANNUAL REPORTS

This section adds a new subsection (c) to section 10 of the act which specifies the information to be included in the semiannual reports to Congress by the Department of Commerce which are already required by section 10(a) of the act. It is the intent of the committee that these reports include all data and analysis which in the judgment of the Department are necessary for Congress to reach informed judgments on the degree to which the purposes of the act are being achieved and on the necessity of further legislation.

Section 12 consolidates existing scattered reporting requirements in the act. It includes information relating to such matters as: Organization changes; efforts to keep business informed of the export control rules and regulations; changes in the exercise of the authorities under the act; the disposition of export license applications; the effects on national security and foreign policy of transfers of technical data; consultations with the technical advisory committees; and violations of the act and penalties imposed for such violation. To a large extent, most of this information is already included in the semiannual report to the Congress. The purpose of this section is to give a clear indication of the continued interest of the Congress in receiving such information. This section should not be read to exclude the inclusion of other information in the semiannual report to the Congress.

SECTION 13—SPECIAL REPORT ON COCOM

This section adds a new section to the act which requires the submission within 12 months of a special report on multilateral export controls.

In the field of export administration, few problems are more troublesome than those involved in implementing multilateral export controls. The current embodiment of these controls is a coordinating committee known as COCOM, which was set up in 1949 in recognition of the fact that the United States could not alone control the flow of technology to the communist countries. This informal, 15-nation group (consisting of the NATO countries, minus Iceland, plus Japan) operates entirely in secrecy, without formal rules of procedure or enforcement powers.

The evidence is that COCOM does not work very well. It is inefficient. There are allegations that the participating governments do not uniformly interpret and enforce the COCOM controls, to the disadvantage of those countries—especially the United States—which apply the controls strictly. Not all countries producing advanced technology are members of COCOM and subject to its controls, and the nonmember countries are of course at an advantage in the international marketplace. The committee has heard charges that COCOM's end-use safeguards are ineffective. For these and other reasons, indications are that the COCOM control list does not accurately reflect advances in technology, that COCOM procedures have an adverse impact on U.S. business, and that COCOM does not effectively prevent the export of technology to destinations which are supposed to be controlled. COCOM is a quarter-century old. It is time to rethink the whole system.

Section 13 directs a detailed study of the operations of COCOM, including analyses of: The process of reviewing the COCOM list; the process for making exceptions to the list; the uniformity of interpretation and enforcement by the participating countries; the problem of exports by countries not participating in COCOM; the effectiveness of compliance procedures for exceptions; and means of improving the effectiveness of multilateral export controls. It is the intent of this section to stimulate a rethinking on COCOM on the part of the administration and to provide data for such rethinking in Congress.

SECTION 14—FOREIGN BOYCOTTS

This section would prohibit Americans and American firms from intentionally furthering or complying on any grounds and in any way with a boycott by a foreign nation against another nation which is friendly to the United States and against which the United States itself does not impose any kind of boycott. All forms of compliance, including providing information relevant to such a foreign boycott, are prohibited; the prohibitions extend to both "tertiary" (discrimination by an American firm or person against another American firm or person) and "secondary" (an American firm or person against a firm or person in the boycotted country) aspects of foreign boycotts. Both discriminatory actions based upon race, color, religion, sex, nationality, or national origin, and upon relationships with a boycotted country, are prohibited. In addition to criminal and civil penalties authorized to be imposed for violations of any provision of the act, this section authorizes Americans aggrieved by violations of foreign boycott compliance prohibitions to bring legal action against violators and, if successful, to collect treble damages and legal costs.

Paragraph (a) strengthens existing policy provisions of the act to reflect the proposed new prohibitions and to require, rather than merely "encourage", resistance to foreign boycotts.

Paragraph (b) requires the filing of reports to the Secretary of Commerce on all requests for information or action received pursuant to a foreign boycott and prompt release by the Secretary of such reports to the public. The paragraph also prohibits all intentional compliance with foreign trade boycotts, but stipulates that "mere absence of a business relationship" with a boycotted country alone shall not be considered proof of such compliance. While the committee favors and expects strict enforcement of the prohibitions, it wishes to avoid harassment of companies simply because they have no business relationship with a boycotted country. It is the intent of the committee that conditions beyond lack of a business relationship with a boycotted country be evident before an American company or other person would be charged with compliance with a foreign boycott and required to produce any evidence he might have to the contrary. When interpreting the phrase "take any action with intent to comply with or to further or support any trade boycott fostered or imposed by any foreign country", it should be understood that it is not the intent of the Congress to restrict the free political expression of U.S. persons.

The specific prohibited acts detailed in the final subparagraphs of paragraph (b) are intended to be illustrative, not exhaustive.

Paragraph (c) authorizes private legal action by aggrieved persons against violators of foreign boycott compliance prohibitions.

Paragraph (d) defines "U.S. person" broadly to carry out the intent of the committee that the proposed prohibitions against compliance with foreign boycotts extend to all persons and entities subject in any way to the forces and constraints of U.S. laws.

The committee, in approving this section by a separate vote of 27 to 1, does not intend or expect to end the direct economic boycott against Israel by the Arab nations (the major foreign embargo to which this provision would immediately apply). It does hope, however, to end American complicity in this foreign boycott, to restore and preserve the freedom of Americans to do business abroad without foreign pressures and dictates, and to reduce somewhat the boycott's impact upon Israel by extracting American firms from the boycott's web. Most importantly, perhaps, this provision will end discrimination by Americans and American firms against each other caused by foreign demands.

In hearings before the Subcommittee on International Trade and Commerce, chaired by Congressman Bingham, the primary sponsor of this provision, and before the full committee, persuasive evidence was obtained indicating that diplomatic efforts over the past decade to reduce boycott demands and gradually extract Americans from involvement in it have not produced measurable results. On the contrary, the growth in the economic power of the Arab nations has been accompanied by increased imposition upon Americans of boycott requirements directed at Israel. Analysis of executive branch records reveal tens of thousands of boycott requests and transactions involving boycott requirements in recent months alone. Data released by the House Government Operations Committee indicates compliance by Americans with boycott requests in over 90 percent of the known cases of boycott requests since October 1975.

The current proposed legislation does not abandon or preclude continued use of diplomatic pressures and efforts to end boycott demands on American business. Indeed, the committee encourages such efforts. Section 14 requires reports of boycott requests to be forwarded by the Secretary of Commerce to the Secretary of State precisely for the purpose of taking appropriate diplomatic action. But the proposed legislation would back up such efforts with a clear and uniform ban on compliance.

The committee recognizes the possibility of reprisals by Arab nations to this provision. The Arab nations, however, have in recent years received large sums of economic assistance from the United States, and have made large purchases of U.S. arms. They will, in the future, require American technical assistance and spare parts to maintain the arms they have purchased. They will presumably continue to invest heavily in such arms.

In view of this growing Arab-American interdependence and the Arab's own interests, Arab nations have, in the past, responded with moderation when faced with refusals to comply, often simply waiving boycott requirements.

The record of the Department of Commerce in enforcing existing policies and limited prohibitions with respect to foreign boycotts has been dismal. The committee expects vigorous but fair enforcement of the prohibitions it proposes in this section, and plans carefully to review the implementation of these provisions.

SECTION 15—PETROLEUM EXPORTS

Section 15 of the bill provides that petroleum products refined in U.S. foreign trade zones from foreign crude oil may be excluded from any quantitative export controls imposed for domestic short supply reasons unless the Secretary of Commerce determines that a product is in short supply, in which case he may restrict its export.

It is the committee's opinion that export controls should apply primarily to products that originate in the United States, rather than those that originate abroad and are processed here. Export controls on petroleum products are designed to insure adequate domestic supplies of petroleum products and should not necessarily apply to petroleum imports. The purpose of a foreign-trade zone is to attract foreign supplies and commodities that can be processed and then reexported, either to the United States or to a foreign country. This exemption applies only to products refined from foreign crude oil. Export controls would still be an option on such products in case of domestic short supply of a particular product.

It is the committee's understanding that this amendment to the Export Administration Act would affect only one refinery, as there is only one refinery located in a foreign-trade zone, which is in Hawaii. That refinery has excess capacity and excess production, and both the refinery and the economy of Hawaii would benefit from the refinery being allowed to utilize that excess capacity to reexport petroleum products refined from imported petroleum.

SECTION 16—STORAGE OF AGRICULTURE EXPORTS IN THE UNITED STATES

The Export Administration Act states that it is U.S. policy to use export controls to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand, to further U.S. foreign policy, and to protect the U.S. national security. Agricultural commodities fall within the export control authority of the act. However, except when controls are imposed for national security and foreign policy purposes, the authority may not be used to restrict agricultural exports if the Secretary of Agriculture determines that the supply of such commodities is in excess of the requirements of the domestic economy.

With the growth of American farm sales abroad, and rising foreign dependence on such exports, the imposition of export controls on agricultural commodities has come under severe criticism. The soybean embargo in 1973 disrupted important markets for U.S. farmers, angered U.S. allies and other foreign customers, and stimulated soybean sales from elsewhere than the United States. Restraints on grain sales to the Soviet Union and Poland in 1975 evoked strong protests from the American farm community. The committee is concerned over the imposition of controls on exports of agricultural commodities that might be undertaken without adequate advance assessment of the possible damaging impact on U.S. domestic and foreign interests. Potential short- and long-term impairment of U.S. farm sales, income, and overseas markets and harm to our foreign relations must be weighed fully against any perceived immediate benefits of such embargoes.

In the interest of America's farmers and of the Nation as a whole, and of promoting a more dependable long-term agricultural export policy, the committee included in H.R. 15377 a provision designed to remove a major element of uncertainty in this field while retaining all protections necessary to U.S. interests. Section 16 of the bill permits agricultural commodities purchased by or for use in a foreign country to be stored in the United States free from export limits which may be imposed subsequently for short supply purposes if the Secretary of Commerce receives adequate assurance, in conjunction with the Secretary of Agriculture, that: (1) Such commodities will eventually be exported; (2) neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact; (3) storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities; and (4) the purpose of such storage is to establish a reserve of such commodities for later use in the purchasing country and not for resale to or use by another country.

Section 16 is intended to permit greater assurance to foreign buyers that agricultural commodities they have already paid for will not be subject to quantitative export limitations imposed after the purchase. It will also encourage acquisition of reserve supplies of U.S. farm commodities by foreign purchasers, with a resulting moderating effect on excessive price fluctuations that have hurt producers and consumers alike. The use of available U.S. storage capacity for agricultural commodities under this provision should mean more American jobs and further help for the U.S. balance of payments.

The protections maintained under this provision would preserve existing authority to safeguard the domestic economy in times of short supply. They also are designed to prevent foreign buyers from using the provision as a means of evading U.S. export policy, or for speculating with U.S. farm commodities to the detriment of American farmers and consumers.

SECTION 17—NUCLEAR POWERPLANTS

Section 17 of the bill prohibits the use of funds authorized by the Foreign Assistance Act of 1961 from being used to finance the construction, operation, or supply of fuel for any nuclear powerplant under an agreement for cooperation between the United States and any other country.

A similar provision, prohibiting the use of aid funds for the construction, operation, or supply of fuel for any nuclear powerplant in Israel or Egypt, was included in the Foreign Assistance Act of 1975. Due to legislative oversight, this provision was not included in the International Security Assistance and Arms Export Control Act of 1976, covering fiscal years 1976 and 1977. The committee determined to correct this oversight by including this provision in H.R. 15377. In addition, in its deliberations, the committee is aware that although consideration might be given to the use of such funds only for proposed nuclear powerplants in Israel and Egypt, this is an inappropriate use of such funds in any country and the provision was written to apply the ban to all countries.

SECTION 18—COMMITTEE AMENDMENT ON NUCLEAR EXPORTS

The committee amendment adds a new section 18 to the bill which amends the Export Administration Act of 1969 to add a new section 17 relating to nuclear exports.

Section 17(a)(1) reflects the committee's formal interest in the problem of nuclear proliferation. Of particular concern to the committee is the potential disruption of U.S. foreign policy and security objectives resulting from the continued spread of nuclear weapons. The committee seeks, with this legislation, to assure the continued fulfillment of our obligation as a signatory to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and, thereby, to increase the prospects for international stability generally.

The committee is distressed by the prospect that countries may be able to exploit existing commercial export arrangements so as to come within a few days or hours of a nuclear weapon capability. Even if such countries were to refrain temporarily from taking the last step, such a situation, if widespread, would create enormous strain in the international system. The committee believes that the intent of the Non-Proliferation Treaty is undermined when countries are able to overcome, through technically legitimate export arrangements, the single most formidable barrier to their becoming nuclear powers—namely the acquisition of sizeable quantities of readily fissionable nuclear material.

Section 17(a)(2) reflects the committee's concern over the inevitable byproducts of nuclear reprocessing—plutonium that is either in a separated or easily separable state and unirradiated mixed oxide reprocessed fuel which itself contains many bombs worth of easily extracted plutonium. The provision also expresses the committee's concern over direct exports of highly enriched uranium and plutonium. The fact that these latter exports are usually for research purposes does not diminish the basic problem affecting readily-fissionable material generally; namely, that it can all be very rapidly converted into nuclear explosive devices. Even when material such as highly enriched uranium, for example, is used in research experiments, it is often only lightly irradiated and therefore retains its suitability as weapon material.

Although readily fissionable material is safeguarded by the International Atomic Energy Agency (IAEA), these material accounting and inspection safeguards are of limited effectiveness in deterring diversion of material which can be rapidly formed into weapons. We must recognize that the only protection we have against actual seizure is the importing countries assurance to us that they will not divert it for use in a nuclear explosion. Cases may arise where such assurance is clearly insufficient to permit the export of this material. The accounting safeguards themselves provide little comfort, since, in the event the material is stolen, the violator can transform the material into weapons before any action could be taken.

With respect to exports of highly enriched uranium and plutonium, alternatives must be devised which would permit necessary research with less risk. The concept of international centers for critical reactor experiments is suggestive in this regard.

The purpose of section 17(b)(1)(A) is to extend U.S. controls over the reprocessing of plutonium produced in U.S. reactors. Under existing agreements for cooperation the foreign party may not reprocess U.S.-supplied fuel which it has used in a U.S.-supplied reactor, unless the United States has agreed that, in its view, the safeguards applying to such reprocessing will be effective. Under most agreements, moreover, the United States must also agree that the facilities in which the reprocessing is to take place are "acceptable." These controls, which in large measure confer upon the United States the right to veto the reprocessing proposed by the foreign party, constitute a potent weapon against the spread of nationally controlled stockpiles of plutonium.

Under past agreements for cooperation, however, these controls have applied only to the reprocessing of U.S.-supplied fuel and have not extended to the reprocessing of fuel obtained from another source even though such fuel was used in a U.S.-exported reactor.

New section 17(b)(1)(A) of the act would insure that in all future agreements for cooperation U.S. reprocessing controls will extend equally to all fuel used in U.S.-exported reactors regardless of origin. The provision will thus insure that U.S.-supplied equipment will not contribute to the development of nationally controlled stockpiles of plutonium except after full U.S. participation in the decision to pursue such activity.

Section 17(b)(1)(A) also mandates that no existing agreement for cooperation may be renewed or amended unless the controls now applicable to U.S. supplied fuel are extended to non-U.S.-supplied fuel when used in U.S.-supplied reactors transferred under the Agreement. The provision does not, however, prohibit continued licensing of reactor exports pursuant to existing agreements, notwithstanding the lack of U.S. reprocessing controls over any non-U.S.-supplied fuel which may be used in such reactors. As noted below, the Secretary of State is directed to undertake promptly consultations with parties to existing agreements for cooperation in order to obtain reprocessing controls over all material irradiated in U.S. exported reactors.

Section 17(b)(1)(B) requires that a state receiving U.S. nuclear material and technology must agree to permit the International Atomic Energy Agency (IAEA) to report to the United States on the status of all inventories of nuclear explosive materials, plutonium, U 233, and highly enriched uranium possessed by he importing country. Such reports might reasonably be expected to include information dealing with the size, physical state, isotopic content (or, in the case of spent fuel, the level of irradiation), and chemical composition of all stocks of such material. It is the hope of the committee that information on the actual location of significant stockpiles of material may also be included.

It would not be possible, of course, for the IAEA to provide information on material not subject to its material accounting program; thus, for example, inventories of weapons usable material possessed by nuclear weapons states would not be subject to disclosure.

The committee believes that the information obtained from the IAEA is necessary to aid in assessing the intentions and capabilities with respect to the development of nuclear weapons of nations receiving U.S. nuclear exports.

Section 17(b)(3)(A) prohibits the issuance of an export license for any nuclear material, equipment, or devices unless the recipient nation has expressly agreed that it will not use the export for the development or manufacture of a nuclear explosive device of any kind, including explosive devices which are purportedly for peaceful purposes. Under existing agreements for cooperation, recipients nations have provided guarantees that U.S. exports will not be used for atomic weapons, or for research on or development of atomic weapons, or for any other military purpose. These guarantees leave uncertain, however, whether use of U.S. exports for fabrication of so-called "peaceful" nuclear explosive devices is precluded. Section 17(b)(3)(A) seeks to correct this ambiguity by requiring an explicit written assurance that U.S.-supplied equipment and materials will not be used for this purpose. Such assurance may be embodied in an amendment to the relevant agreement for cooperation or may be provided in a separate diplomatic note.

Inasmuch as using special nuclear material, such as plutonium, produced from U.S. exports for an explosive device would amount to indirect use of the export itself for this purpose, such use of produced material would also be precluded by the agreement required by this provision. All but a small minority of nations which are parties to agreements for cooperation with the United States have previously renounced the development of nuclear explosive devices. Thus, the requirements of this provision are unlikely to impede continued U.S. nuclear exports in most instances. Nevertheless, the committee has decided to delay for 1 year the effect of section 17(b)(3)(A) in order to further reduce the likelihood of disruptions in U.S. nuclear export activity.

Section 17(b)(4) sets forth the standard to be applied by the Secretary of State in making a vitally important determination required by the terms of U.S. agreements for cooperation in the event a foreign party to such an agreement seeks to reprocess nuclear fuel it has imported from the United States. Under the agreements the reprocessing of such material may be performed only upon a joint determination by the parties that safeguards may be effectively applied to this activity. Section 17(b)(4) provides that the Secretary of State shall make this determination on behalf of the United States and sets forth the factors he must weigh in each case in assessing the effectiveness of the applicable safeguards.

Specifically, the provision requires that to be judged effective, safeguards must provide for reliable and timely warning of the diversion of any reprocessed plutonium well in advance of the point at which the diverting government could construct a nuclear explosive from this material. Such early warning is essential to permit an effective international reaction after the seizure has taken place. A period of at least several months' duration, certainly no less than three months, would be necessary to satisfy this requirement.

Since a nation diverting reprocessed plutonium may have covertly undertaken the work necessary for the production of nuclear weaponry in advance of seizing the nuclear material, it must be assumed that at the time of the diversion, the single remaining requirement for an explosive device is the fissionable weapons material, and that with this material in hand, weapons may be assembled within days if not sooner. This provision also requires that in determining the effectiveness of the safeguards applying to reprocessing, the Secretary of State shall take into account whether the amount of material to be reprocessed would, under the circumstances of the particular case, be of strategic significance to the nation in question if diverted.

Accordingly, the committee recognizes that the existing safeguards, which are essentially monitoring and accounting systems, are not now such as to permit the Secretary of State to make an affirmative determination as to the effectiveness of safeguards applying to foreign reprocessing of U.S. nuclear material. Expert testimony, however, has established that many years remain before such reprocessing will be either necessary or commercially viable. Thus, time exists in which to find satisfactory safeguard solutions. Improvements will be needed in safeguard detection systems themselves. Such systems are useful, however, only when the process of transforming stolen nuclear material into weapons is itself time-consuming, costly, and difficult. Only under these conditions does it appear that the reliable timely warning required by this provision may be attained.

Promising technologies exist, however, which, if pursued, may satisfy this standard. Among them are the thorium based fuel cycle, the tandem cycle which makes the separation of plutonium unnecessary, and processes for diluting the concentration of plutonium in reprocessed fuel. Time will be needed to perfect these possibilities, however, and time is what this provision helps to assure.

Not only, then, must safeguards provide a prompt alarm when material is diverted, but additionally, the stolen material itself must be so contained or constituted that it cannot be converted overnight into nuclear explosive devices.

This is essentially the situation that obtains today with respect to normal spent reactor fuel. Even if it diverted, it cannot be immediately transformed into a bomb. It is radioactive, hard to handle, and difficult to work with. Thus there is time for action. Time is what gives safeguards their deterrent effect. The importance of timely warning has been recognized repeatedly in U.S. policy statements, most recently in the President's report to the Congress on Nuclear Safeguards (May 1975), pursuant to the Export Administration Act.

"Nuclear material, equipment, and devices" as used in section 17 includes production and utilization facilities, special nuclear material, source material, and byproduct material, as these terms are defined in the Atomic Energy Act of 1954, as well as component parts (including heavy water) which are for use in nuclear related applications and which are licensed by the Department of Commerce pursuant to the Export Administration Act of 1969.

As section 17 is addressed to the risk of nuclear weapons proliferation arising from civilian commerce in nuclear material and equipment, the committee does not intend the provisions of this section to apply to any defense-related agreements entered into pursuant to sections 91(c), or 144(b) or (c) of the Atomic Energy Act of 1954 or to the renewal or amendment of such agreements.

Cost Estimates

Pursuant to clause 7 of rule XIII of the rules of the House, the committee finds that the enactment of H.R. 15377, to extend the authorities of the Export Administration Act of 1969 through fiscal year 1977 and for other purposes, does not authorize or require any additional appropriation for such period. The Domestic and International Business Administration of the Department of Commerce, which administers the Export Administration Act, has already been funded for fiscal year 1977 under Public Law 94–362, making appropriations for the Departments of State, Justice, Commerce, and the Judiciary for fiscal year 1977.

Statement Required by Clause 2(l)(3) of Rule XI of the Rules of the House

Pursuant to the requirements of clause 2(l)(3) of the rules of the House, the following statements are made:

(A) OVERSIGHT FINDINGS AND RECOMMENDATIONS

Under the House Committee Reform Act of 1974, jurisdiction over export controls was transferred to the Committee on International Relations. Among laws in this category is the Export Administration Act of 1969. In carrying out its oversight responsibilities for this legislation, the full committee and its appropriate subcommittees have conducted numerous hearings on subjects relating to the act and have reviewed studies of the act conducted by the Congressional Research Service of the Library of Congress and the General Accounting Office. Based on the findings of these oversight activities, the committee recommends that the Export Administration Act of 1969, as amended by H.R. 15377, be extended through fiscal year 1977.

(B) BUDGET AUTHORITY

H.R. 15377 does not create any budget authority.

(C) CONGRESSIONAL BUDGET OFFICE ESTIMATE AND COMPARISON

No estimate and comparison by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974 has been received by the committee.

(D) COMMITTEE ON GOVERNMENT OPERATIONS SUMMARY

No oversight findings and recommendations have been received which relate to this measure from the Committee on Government Operations under clause 2(b)(2) of rule X of the rules of the House.

Inflationary Impact Statement

Enactment of H.R. 15377 would not have an inflationary impact on the Nation's economy. On the contrary, enactment of H.R. 15377 extends the authorities of the Export Administration Act of 1969, which has among its purposes the mandate to assure that (1) the inflationary impact of foreign demand is reduced and (2) that restrictions on access to foreign supplies that have or may have a serious domestic inflationary impact are removed. Thus H.R. 15377 could be characterized as counterinflationary.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

Export Administration Act of 1969

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DECLARATION OF POLICY

Sec. 3. The Congress makes the following declarations:

(1) * * *

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(5) It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, (B) to [encourage and request] *require* domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including [the furnishing of information or the signing of] *furnishing information or entering into or implementing* agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States, and (C)[4] to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

AUTHORITY

Sec. 4. (a) (1) * * *

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(b) [(1)] To effectuate the policies set forth in section 3 of this Act, the President may prohibit or curtail the exportation from the United States, its territories and possessions, of any articles, materials, or supplies, including technical data or any other information, except under such rules and regulations as he shall prescribe. To the extent necessary to achieve effective enforcement of this Act, these rules and regulations may apply to the financing, transporting, and other servicing of exports and the participation therein by any person. Rules and regulations may provide for denial of any request or application for authority to export articles, materials, or supplies, including technical data, or any other information, from the United States, its territories and possessions, to any nation or combination of nations threatening the national security of the United States if the President determines that their report would prove detrimental to the national security of the United States [, regardless of their availability from nations other than any nation or combination of nations threatening the national security of the United States, but whenever export licenses are required on the ground that considerations of national security override considerations of foreign availability, the reasons for so doing shall be reported to the Congress in the quarterly report following the decision to require such licenses on that ground to the extent consideration of national security and foreign policy permit]. *The President shall not impose export controls for national security purposes on the export from the United States of articles, materials, or supplies, including technical data or other information, which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such a control would prove detrimental to the national security of the United States. The nature of such evidence shall be included in the semiannual report required by section 10 of this Act. Where in accordance with this subsection, export controls are imposed for national security purposes notwithstanding foreign availability, the President shall take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability.* [The rules and regulations shall implement the provisions of section 3(5) of this Act and shall require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in that section must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purpose of that section.] In curtailing the exportation of any articles, materials, or supplies to effectuate the policy set forth in section 3(2)(A) of this Act, the President is authorized and directed to allocate a portion of export licenses on the basis of factors other than a prior history of exportation.

[(2) the Secretary of Commerce, in cooperation with appropriate United States Government departments and agencies and the appropriate technical advisory committees established under section 5(c), shall undertake an investigation to determine which articles, materials, and supplies, including technical data and other information, should no longer be subject to export controls because of their significance to the national security of the United States. Notwithstanding the provisions of paragraph (1), the President shall remove unilateral export controls on the export from the United States of articles, materials, or supplies, including technical data or other information, which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, except that any such control may remain in effect if the President determines that adequate evidence has been presented to him demonstrating that the absence of such a control would prove detrimental to the national security of the United

States. The nature of such evidence shall be included in the special report required by paragraph (4).

[(3) In conducting the investigation referred to in paragraph (2) and in taking the action required under such paragraph, the Secretary of Commerce shall give priority to those controls which apply to articles, materials, and supplies, including technical data and other information, for which there are significant potential export markets.

[(4) not later than nine months after the date of enactment of the Equal Export Opportunity Act, the Secretary of Commerce shall submit to the President and to the Congress a special report of actions taken under paragraphs (2) and (3). Such report shall contain—

[(A) a list of any articles, materials, and supplies, including technical data and other information, which are subject under this Act to export controls greater than those imposed by nations with which the United States has defense treaty commitments, and the reasons for such greater controls; and

[(B) a list of any procedures applicable to export licensing in the United States which may be or are claimed to be more burdensome than similar procedures utilized in nations with which the United States has defense treaty commitments, and the reasons for retaining such procedures in their present form.]

(c) (1) To effectuate the policy set forth in section 3(2) (A) of this Act, the Secretary of Commerce shall monitor exports, and contracts for exports, of any article, material, or supply (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection *and in the last two sentences of section 7(c) of this Act.*

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each article, material, or supply monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

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(f) *(1)* The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by him to be in excess of the requirements of the domestic economy, except to the extent the President determines that such exercise of authority is required to effectuate the policies set forth in clause (B) or (C) of paragraph (2) of section 3 of this Act.

(2) Upon approval of the Secretary of Commerce, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed pursuant to section 3(2)(A) of this Act subsequent to such approval. The Secretary of Commerce may not grant approval hereunder unless he receives adequate assurance and, in conjunction with the Secretary of Agriculture, so finds that such commodities will eventually be exported, that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary of Commerce is authorized to issue such rules and regulations as may be necessary to implement this paragraph.

[(g) Any export license application reqired by the exercise of authority under this Act to effectuate the policies of section 3(1)(B) or 3(2)(C) shall be approved or disapproved not later than 90 days after its submission. If additional time is required, the Secretary of Commerce or other official exercising authority under this Act shall inform the applicant of the circumstances requiring such additional time and give an estimate of when his decision will be made.]

(g)(1) It is the intent of Congress that any export license application required under this Act shall be approved or disapproved within 90 days of its receipt. Upon the expiration of the 90-day period beginning on the date of its receipt, any export license application required under this Act which has not been approved or disapproved shall be deemed to be approved and the license shall be issued unless the Secretary of Commerce or other official exercising authority under this Act finds that additional time is required and notifies the applicant in writing of the specific circumstances requiring such additional time and the estimated date when the decision will be made.

(2) With respect to any export license application not finally approved or disapproved within 90 days of its receipt as provided in paragraph (1) of this subsection, the applicant shall, to the maximum extent consistent with the national security of the United States, be specifically informed in writing of questions raised and negative considerations or recommendations made by any agency or department of the Government with respect to such license application, and shall be accorded an opportunity to respond to such questions, considerations, or recommendations in writing prior to final approval or disapproval by the Secretary of Commerce or other official exercising authority under this Act. In making such final approval or disapproval, the Secretary of Commerce or other official exercising authority under this Act shall take fully into account the applicant's response.

(h)(1) The Congress finds that the defense posture of the United States may be seriously compromised if the Nation's goods and technology are exported [to a controlled country] without an adequate and knowledgeable assessment being made to determine whether export of such goods and technology will [significantly increase the military capability of such country] *make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States.* It is the purpose of this subsection to provide for such an assessment and to authorize the Secretary of Defense to review any proposed export of goods or technology to any [such country] *nation to which exports are restricted for national security purposes* and, whenever he determines that the export of such goods or technology will [significantly increase the military capability of such country] *make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States* to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the export control office to which licensing requests are made, the types and categories of transactions which should be reviewed by him to carry out the purpose of this subsection. [Whenever a license or other authority is requested for the export of such goods or technology to any controlled country, the] *The* appropriate export control office or agency to whom [such] *a* request *which falls within such types and categories* is made shall notify the Secretary of Defense of such request, and such office may not issue any license or other authority pursuant to such request prior to the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider all notifications submitted to him pursuant to this subsection and, not later than 30 days after notification of the request shall—

(A) recommend to the President that he disapprove [any] *a* request for the export of any goods or technology [to any controlled country if he determines that the export of such goods or technology will significantly increase the military capability of such country] *which he determines will make a significant contribution to the military potential of any nation or nations which would prove detrimental to the national security of the United States;*

(B) notify such office or agency that he will interpose no objection if appropriate conditions designed to achieve the purposes of this Act are imposed; or

(C) indicate that he does not intend to interpose an objection to the [export of such goods or technology] *request.*

If the President notifies such office or agency, within 30 days after receiving a recommendation from the Secretary, that he disapproves such export, no license or other authorization may be issued for [the export of such goods or technology to such country] *such export.*

(3) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense pursuant to this section, the President shall submit to the Congress a statement indicating his decision together with the recommendation of the Secretary of Defense.

(4) As used in this subsection—

(A) the term "goods or technology" means—

(i) machinery, equipment, capital goods, or computer software; or

(ii) any license or other arrangement for the use of any patent, trade secret, design, or plan with respect to any item described in clause (i); *and*

(B) the term "export control office" means any office or agency of the United States Government whose approval or permission is required pursuant to existing law for the export of goods or technology [; and

(C) the term "controlled country" means any Communist country as defined under section 620(f) of the Foreign Assistance Act of 1961].

(i) In imposing export controls to effectuate the policy stated in section 3(2)(A) of this Act, the President's authority shall include but not be limited to, the imposition of export license fees.

(j)(1) Any person (including any college, university, or other educational institution) who enters into any agreement for, or which may result in, the transfer from the United States of technical data or other information to any nation to which exports are restricted for national security or foreign policy purposes shall furnish to the Secretary of Commerce such information with respect to such agreement as the Secretary shall by regulation require in order to enable him to monitor the effects of such transfers on the national security and foreign policy of the United States.

(2) The Secretary of Commerce shall conduct a study of the problem of the export, by publications or any other means of public dissemination, of technical data or other information from the United States, the export of which might prove detrimental to the national security or foreign policy of the United States. Not later than 6 months after the enactment of this subsection, the Secretary shall report to the Congress his assessment of the impact of the export of such technical data or other information by such means on the national security and foreign policy of the United States and his recommendations for monitoring such exports without impairing freedom of speech, freedom of press, or the freedom of scientific exchange. Such report may be included in the semiannual report required by section 10 of this Act.

(k)(1)(A) Rules and regulations prescribed under subsection (b) shall implement the provisions of section 3(5) of this Act and shall require that any United States person receiving a request for furnishing information or entering into agreements as specified in that section must report this fact to the Secretary of Commerce for such action as the Secretary may deem appropriate to carry out the policy of that section.

(B) Any report filed under subparagraph (A) after the enactment of this subsection shall be made available promptly for public inspection and copying. The Secretary of Commerce shall transmit copies of such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary of Commerce, may deem appropriate for carrying out the policy set forth in section 3(5). The provisions of section 7(c) shall not apply to reports filed under subparagraph (A) of this paragraph.

(2)(A) In furtherance of the policy set forth in section 3(5) (A) and (B), no United States person shall take any action with intent to comply with or to further or support any trade boycott fostered or imposed by any foreign country against a country which is friendly to the United States and which is not itself the object of any form of

embargo by the United States. The mere absence of a business relationship with a boycotted country does not indicate the existence of the intent required by the preceding sentence.

(B) For the purpose of enforcing the prohibition contained in subparagraph (A) of this paragraph, the Secretary of Commerce shall issue rules and regulations prohibiting any United States person from taking any action with the required intent, including the following actions:

(i) Discriminating against any United States person, including any officer, employee, agent, director, or stockholder or other owner of any United States person, on the basis of race, color, religion, sex, nationality, or national origin.

(ii) Boycotting or refraining from doing business with any United States person, with the boycotted country, with any business concern in or of the boycotted country, with any national or resident of the boycotted country, or with any business concern or other person which has done, does, or proposes to do business with the boycotted country, with any business concern in or of the boycotted country, or any national or resident of the boycotted country.

(iii) Furnishing information with respect to the race, color, religion, sex, nationality, or national origin of any past, present, or stockholder or other owner of any United States person.

(iv) Furnishing information about any past, present, or proposed business relationship, including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply, with any United States person, with the boycotted country, with any business concern in or of the boycotted country, with any national or resident of the boycotted country, or with any business concern or other person which has done, does, or proposes to do business with the boycotted country, with any business concern in or of the boycotted country, or any national or resident of the boycotted country.

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(l) Petroleum products refined in United States Foreign-Trade Zones from foreign crude oil shall be excluded from any quantitative restrictions imposed pursuant to section 3(2)(A) of this Act, except that, if the Secretary of Commerce finds that a product is in short supply, the Secretary of Commerce is authorized to issue such rules and regulations as may be necessary to limit exports.

CONSULTATION AND STANDARDS

SEC. 5. (a) * * *

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(c) (1) Upon written request by representatives of a substantial segment of any industry which produces articles, materials and supplies, including technical data and other information, which are subject to export controls or are being considered for such controls because of their significance to the national security of the United States, the Secretary of Commerce shall appoint a technical advisory committee for any grouping of such articles, materials, and supplies, including technical data and other information, which he determines is difficult to evaluate because of questions concerning technical matters, worldwide availability and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State, and, when appropriate, other Government departments and agencies. No person serving on any such committee who is representative of industry shall serve on such committee for more than two consecutive years.

(2) It shall be the duty and function of the technical advisory committees established under paragraph (1) to advise and assist the Secretary of Commerce and any other department, agency, or official of the Government of the United States to which the President has delegated power, authority, and discretion under section 4(d) with respect to actions designed to carry out the policy set forth in section 3 of this Act. Such committees shall be consulted with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to any articles, materials, or supplies, including technical data or other information, and including those whose export is subject to multilateral controls undertaken with nations with which the United States has defense treaty commitments, for which the committees have expertise. [Such committees shall also be consulted and kept fully informed of progress with respect to the investigation required by section 4(b)(2) of this Act.] *The Secretary shall include in each semiannual report required by section 10 of this Act an accounting of the consultation undertaken pursuant to this paragraph, the use made of the advice rendered by the technical advisory committees pursuant to this paragraph, and the contributions of the technical advisory committees to carrying out the policies of this Act.* Nothing in this subsection shall prevent the Secretary from consulting, at any time, with any person representing industry or the general public regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary of Commerce, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if he determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by him in connection with his duties as a member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the Chairman, unless the Chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purpose of this Act. Each such committee shall be terminated after a period of two years, unless extended by the Secretary for additional periods of two years. The Secretary shall consult each such committee with regard to such termination or extension of that committee.

(5) To facilitate the work of the technical advisory committees, the Secretary of Commerce, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the grouping of articles, materials, and supplies with respect to which that committee furnishes advice.

VIOLATIONS

SEC. 6. (a) Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than [$10,000] *$25,000* or imprisoned not more than one year, or both. For a second or subsequent offense, the offender shall be fined not more than three times the value of the exports involved or [$20,000] *$50,000* whichever is greater, or imprisoned not more than five years, or both.

(b) Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any [Communist-dominated nation] *country to which exports are restricted for national security or foreign policy purposes* shall be fined not more than five times the value of the exports involved or [$20,000] *$50,000* whichever is greater, or imprisoned not more than five years, or both.

(c) The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed [$1,000] *$10,000* for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed.

(d) The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. *Further, the payment of any penalty imposed pursuant to subsection (c) may be deferred or suspended in whole or in part for a time equal to or less than any probation period (which may exceed one year) that may be imposed upon such person. Such deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.*

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(g) Any United States person aggrieved by action taken as a result of a violation of section 4(k)(2) of this Act may institute a civil action in an appropriate United States district court, without regard to the amount in controversy, and may recover threefold actual damages, reasonable attorney's fees, and other litigation costs reasonably incurred, and obtain other appropriate relief.

[(g)](*h*) Nothing in subsection (c), (d), [or] (f), or (*g*) limits

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remise, or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

ENFORCEMENT

SEC. 7. (a) * * *

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(c) No department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest. *Nothing in this Act shall be construed as authorizing the withholding of information from Congress, and any information obtained under this Act, including any report or license application required under section 4(b) and any information required under section 4(j)(1), shall be made available upon request to any committee of Congress or any subcommittee thereof. No such committee or subcommittee shall disclose any information obtained under this Act which is submitted on a confidential basis unless such committee or subcommittee determines that the withholding thereof is contrary to the national interest.*

(d) In the administration of this Act, reporting requirements shall be so designated as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology. A detailed statement with respect to any action taken in compliance with this subsection shall be included in the first quarterly report made pursuant to section 10 after such action is taken.

(*e*) *The Secretary of Commerce, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(c), shall review the rules and regulations issued under this Act in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such rules and regulations or by any other means. Not later than 6 months after the enactment of this subsection, the Secretary of Commerce shall report to Congress on the actions taken on the basis of such review to simplify such rules and regulations. Such report may be included in the semiannual report required by section 10 of this Act.*

[QUARTERLY] REPORT

SEC. 10. (a) The head of any department or agency, or other official exercising any functions under this Act, shall make a semiannual report, to the President and to the Congress of his operations hereunder.

(b) (1) The [quarterly] report required for the first quarter of 1975 and every [second] report thereafter shall include summaries of the information contained in the reports required by section 4(c) (2) of this Act, together with an analysis by the Secretary of Commerce of (A) the impact on the economy and world trade of shortages or increased prices for articles, materials, or supplies subject to monitoring under this Act, (B) the worldwide supply of such articles, materials, and supplies, and (C) actions taken by other nations in response to such shortages or increased prices.

(2) Each such [quarterly] report shall also contain an analysis by the Secretary of Commerce of (A) the impact on the economy and world trade of shortages or increased prices for commodities subject to the reporting requirements of section 812 of the Agricultural Act of 1970, (B) the worldwide supply of such commodities, and (C) actions being taken by other nations in response to such shortages or increased prices. The Secretary of Agriculture shall fully cooperate with the Secretary of Commerce in providing all information required by the Secretary of Commerce in making such analysis.

(c) Each semiannual report shall include an accounting of—

(1) any organizational and procedural changes instituted, any reviews undertaken, and any means used to keep the business sector of the Nation informed, pursuant to section 4(a) of this Act;

(2) any changes in the exercise of the authorities of section 4 (b) of this Act;

(3) any delegations of authority under section 4(e) of this Act;

(4) the disposition of export license applications pursuant to sections 4(g) and 4(h) of this Act;

(5) the effects on the national security and foreign policy of the United States of transfers from the United States of technical data or other information which are reported to the Secretary of Commerce pursuant to section 4(j) of this Act;

(6) consultations undertaken with technical advisory committees pursuant to section 5(c) of this Act; and

(7) violations of the provisions of this Act and penalties imposed pursuant to section 6 of this Act.

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SPECIAL REPORT

SEC. 11. Not later than 12 months after the enactment of this section, the President shall submit to the Congress a special report on multilateral export controls in which the United States participates pursuant to this Act and pursuant to the Mutual Defense Assistance Control Act of 1951. The purpose of such special report shall be to assess the effectiveness of such multilateral export controls and to formulate specific proposals for increasing the effectiveness of such controls. The special report shall include—

(1) the current list of commodities controlled for export by agreement of the group known as the Coordinating Committee of the Consultative Group (hereafter in this section referred to as the "Committee") and an analysis of the process of reviewing such list and of the changes which result from such review;

(2) data on and analysis of requests for exceptions to such list;

(3) a description and an analysis of the process by which decisions are made by the Committee on whether or not to grant such requests;

(4) an analysis of the uniformity of interpretation and enforcement by the participating countries of the export controls agreed to by the Committee (including controls over the re-export of such commodities from countries not participating in the Committee), and information on each case where such participating countries have acted contrary to the United States interpretation of the policy of the Committee, including United States representations to such countries and the response of such countries;

(5) an analysis of the problem of exports of advanced technology by countries not participating in the Committee, including such exports by subsidiaries or affiliates of United States businesses in such countries;

(6) an analyis of the effectiveness of any procedures employed, in cases in which an exception for a listed commodity is granted by the Committee, to determine whether there has been compliance with any conditions on the use of the excepted commodity which were a basis for the exception; and

(7) detailed recommendations for improving, through formalization or other means, the effectiveness of multilateral export controls, including specific recommendations for the development of more precise criteria and procedures for collective export decisions and for the development of more detailed and formal enforcement mechanisms to assure more uniform interpretation of and compliance with such criteria, procedures, and decisions by all countries participating in such multilateral export controls.

DEFINITION

SEC. [11.] *12.* The term "person" as used in this Act includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof. *The term "United States person" includes any United States resident or national, any domestic business concern (including any domestic subsidiary or affiliate of any foreign business concern), and any foreign subsidiary or affiliate of any domestic business concern.*

EFFECT ON OTHER ACTS

SEC. [12.] *13.* (a) The Act of February 15, 1936 (49 Stat. 1140), relating to the licensing of exports of tinplate scrap, is hereby superseded; but nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934).

AUTHORIZATION OF APPROPRIATIONS

SEC. 14. Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this Act for any fiscal year commencing on or after October 1, 1977, unless previously and specifically authorized by legislation enacted after the enactment of this section.

EFFECTIVE DATE

SEC. [13.] *15.* (a) This Act takes effect upon the expiration of the Export Control Act of 1949.

(b) All outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action under the Export Control Act of 1949 or section 6 of the Act of July 2, 1940 (54 Stat. 714), shall, until amended or revoked, remain in full force and effect, the same as if promulgated under this Act.

TERMINATION DATE

SEC. [14.] *16.* The authority granted by this Act terminates on September 30, [1976] *1977* or upon any prior date which the Congress by concurrent resolution or the President by proclamation may designate.

NUCLEAR EXPORTS

SEC. 17. (a) (1) The Congress finds that the export by the United States of nuclear material, equipment, and devices, if not properly regulated, could allow countries to come unacceptably close to a nuclear weapon capability, thereby adversely affecting international stability, the foreign policy objectives of the United States, and undermining the principle of nuclear nonproliferation agreed to by the United States as a signatory to the Treaty on the Non-Proliferation of Nuclear Weapons.

(2) The Congress finds that nuclear export activities which enable countries to possess strategically significant quantities of unirradiated, readily fissionable material are inherently unsafe.

(3) It is, therefore, the purpose of this section to implement the policies stated in paragraphs (1) and (2) of section 3 of this Act by regulating the export of nuclear material, equipment, and devices which could prove detrimental to United States national security and foreign policy objectives.

(b) (1) No agreement for cooperation providing for the export of any nuclear material, equipment, or devices for civil uses may be entered into with any foreign country, group of countries, or international organization, and no amendment to or renewal of any such agreement may be agreed to, unless—

(A) the provisions of the agreement concerning the reprocessing of special nuclear material supplied by the United States will apply equally to all special nuclear material produced through the use of any nuclear reactor transferred under such agreement; and

(B) the recipient country, group of countries, or international

organization, has agreed to permit the International Atomic Energy Agency to report to the United States, upon a request by the United States, on the status of all inventories of plutonium, uranium 233, and highly enriched uranium possessed by that country, group of countries, or international oragnization and subject to International Atomic Energy Agency safeguards.

(2) The Secretary of State shall undertake consultations with all parties to agreements for cooperation existing on the date of enactment of this section in order to seek inclusion in such agreements of the provisions described in paragraphs (1)(A) and (1)(B) of this subsection.

(3)(A) No license may be issued for the export of any nuclear material, equipment, or devices pursuant to an agreement for cooperation unless the recipient country, group of countries, or international organization, has agreed that the material, equipment, and devices subject to that agreement will not be used for any nuclear explosive device, regardless of how the device itself is intended to be used.

(B) Subparagraph (A) of this paragraph shall take effect at the end of the one year period beginning on the date of enactment of this section.

(4) In any case in which a party to any agreement for cooperation seeks to reprocess special nuclear material produced through the use of any nuclear material, equipment, or devices supplied by the United States, the Secretary of State may only determine that safeguards can be applied effectively to such reprocessing if he finds that the reliable detection of any diversion and the timely warning to the United States of such diversion will occur well in advance of the time at which that party could transform strategic quantities of diverted nuclear material into explosive nuclear devices.

MUTUAL DEFENSE ASSISTANCE CONTROL ACT OF 1951

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[TITLE II—OTHER MATERIALS

[SEC. 201. The Congress of the United States further declares it to be the policy of the United States to regulate the export of commodities other than those specified in title I of this Act to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination, in order to strengthen the United States and other cooperating nations of the free world and to oppose and offset by nonmilitary action acts which threaten the security of the United States and the peace of the world.

[SEC. 202. The United States shall negotiate with any country receiving military, economic, or financial assistance arrangements for the recipient country to undertake a program for controlling exports of items not subject to embargo under title I of this Act, but which in the judgment of the Administrator should be controlled to any nation or combination of nations threatening the security of the United States; including the Union of Soviet Socialist Republics and all countries under its domination.

[SEC. 203. All military, economic, and financial assistance shall be terminated when the President determines that the recipient country (1) is not effectively cooperating with the United States pursuant to this title, or (2) is failing to furnish to the United States information sufficient for the President to determine that the recipient country is effectively cooperating with the United States.]

TITLE III—GENERAL PROVISIONS

SEC. 301. All other nations (those not receiving United States military, economic, or financial assistance) shall be invited by the President to cooperate jointly in a group or groups or on an individual basis in controlling the export of the commodities referred to in title I [and title II] of this Act to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination.

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SUPPLEMENTAL VIEWS OF HON. BENJAMIN S. ROSENTHAL

I applaud the action of the committee in voting 27 to 1 to include in this bill provisions to make illegal American complicity in the Arab boycott. In 1965, the Congress thought it was ending American participation in the boycott of Israel when it made such participation against U.S. policy and it gave strong authority to the Commerce Department to enforce this policy.

As the years have passed, we in the Congress have waited vainly for the Commerce Department to take strong action. Instead we have seen the Commerce Department circulating to industry trade offers containing boycott conditions and counseling U.S. companies in ways to evade the requirements of the act. As recently as this March, Commerce Department officials were telling a select group of businessmen how to disregard even the weak civil rights prohibitions which the Department had been forced to enact only 4 months before.

As the Commerce Department procrastinated, boycott demands against American businesses multiplied. Discrimination among American businesses spread. The blacklist of American companies which refused to suffer foreign dictation in their commercial dealings swelled. Today the blacklist includes over 1,500 firms and individuals.

Recent figures released by the Commerce Department to the Government Operations Subcommittee on Commerce, Consumer and Monetary Affairs which I chair reveal how pervasive the pressures against American businesses have become. Banks are the principal enforcers of the boycott. They are the ones who exact compliance with the boycott as the price for payment by the Arab importer. According to the Department, during the period from April 1 through June 30, 1976, 131 U.S. banks reported that they had engaged in 8,026 transactions involving 15,392 requests to enforce restrictive trade practices. The total amount involved in these transactions was $479 million. Equally troubling, the number of transactions conditioned on compliance with the boycott had grown by over 25 percent from the immediately preceding 4-month period.

Based upon statistics such as the above, the Los Angeles Times recently made a dire prediction:

> Not too many years in the future, the Nation could have two kinds of auto companies, steel makers, trading firms and banks: those that deal with the Arabs, and those that don't. If that happened, the two groups would be hampered by the blacklist in their dealings with each other. Imagine the effects on the Nation's economy, its sense of nationhood, its integrity.

FOCUS OF THE BOYCOTT

The Commerce, Consumer and Monetary Affairs Subcommittee held two days of hearings on the boycott in early June. Their inquiry focused on the pressures exerted on the American financial community and, through it, American industry, to comply with Arab boycott demands. Among the witnesses were Chairman Roderick Hills of the SEC; the General Counsel of the Federal Reserve Board; the head of the Commerce Department's Office of Export Administration, and officials of Chemical Bank and Morgan Guaranty. These hearings put the lie to one of the prime contentions of boycott apologists that the boycott is directed solely against Israel. As the top bank and federal officials made clear, the Arab boycott is largely a boycott of American business. In its secondary aspect, the boycott seeks to prevent American industry from doing business with one of this nation's principal trading partners—Israel—and precludes blacklisted American firms from doing business in the growing markets of the 20 states of the Arab League. In the boycott's so-called tertiary aspect, American companies are pressured into discriminating against other American companies, that is, those on the boycott list.

BOYCOTT BACKGROUND AND THEORY

It is important to understand how the boycott of American business operates. Virtually from the founding of Israel in 1948, Arab states ceased to do business with that state. While an unfortunate consequence of the hostilities in the Middle East, this severance of economic relations has precedents in international relations and resembles U.S. policy with respect to countries such as Cuba, Vietnam and North Korea. But the Arab States carried this practice further and elected to include innocent third parties, including American businesses, not otherwise involved in the Middle East dispute. This escalation led to the development of a list of mostly American companies and individuals allegedly connected in some way with Israel or with Jews with which no Arab state or company could do business. This is the Arab blacklist which, in the 1970 Saudi Arabian version made public by the Senate Subcommittee on Multinational Corporations, contains the names of over 1,500 U.S. companies financial institutions, and individuals.

The theory of the boycott is simple. No company on the blacklist should expect to do business with any Arab State or business. Conversely, any company doing business with an Arab State or business cannot do business with Israel. In practice, as a condition of doing business with Arab interests:

Exporters are asked to certify that they do not sell to Israel,

Shipping lines must confirm that vessels stopping at Arab ports have not stopped in Israel,

Manufacturers must stipulate that they have no Israeli operations and their products contain no Israel-made components,

Banks honor certain letters of credit only for customers who certify they have no dealings with Israel.

This economic pressure by Arabs directly against U.S. firms has been called the secondary boycott.

But the reach of the boycott can be far wider to encompass not only doing business with Israel but also doing business with any company which does business with Israel. U.S. firms are thus put in the position of discriminating against other U.S. firms pursuant to the dictates of foreign governments. In any form it is equally repugnant in restricting the freedom of American concerns to do business with whom they wish.

BOYCOTT IMPACT

The Arab boycott has an enormous impact upon American business. The House Commerce Investigations Subcommittee reported in May that American firms are complying with over 90 percent of the boycott requests as the cost of doing business with Arab States. The subcommittee, headed by Representative Moss, also found that during 1974 and 1975, 637 U.S. exporters sold at least $352.9 million and as much as $781.5 million in goods and services under boycott conditions. The actual figure is unknown since many firms reporting to the Commerce Department on boycott pressures refused to admit whether they had given in. The Commerce Department has required information as to compliance only since late 1975.

In the hearings before my subcommittee, banks gave graphic evidence of the pervasiveness of boycott requests. The resident counsel of Morgan Guaranty testified that in the 4 months from December 1975 to April 1976, his bank had received 824 letters of credit in a total amount of $41,237,815 containing boycott clauses. These letters of credit were issued not only by Arab banks but also by banks in other Asian and African countries which have joined the boycott against American businesses. In each of these instances, Morgan Guaranty exacted compliance with the boycott as a condition of payment to the American exporter under the letter of credit.

Appearing on the boycott list can have a significant impact upon a U.S. company's business. RCA Corporation offers a typical example. Prior to being included on the blacklist, RCA did about $10 million worth of business annually with the Arab world. The company had every reason to believe, it has said, that its sales would have increased substantially over this figure. Today, as a consequence of being boycotted, RCA operations in Arab countries have shrunk to under $1 million, a direct loss of over $9 million.

The boycott not only is hurting American businesses which must choose between doing business with Arabs or Israelis, it is also having a dire impact upon Israel. This impact has been greatest in certain high technology areas where the compliance of a few American firms with the boycott precludes access to vital new developments. In the area of energy exploration, for example, Israel has been unable to draw upon the services of the American petroleum giants for assistance in finding new sources of oil. This has forced Israel into a partnership with a non-American company and has prompted strict secrecy as to the identity of this company for fear of reprisal. Communications technology is another area where Israel has had to look elsewhere at greater expense for the assistance which American companies could better provide.

This impact on both U.S. companies and Israel threatens to increase substantially unless strong action is taken to curb the domestic boycott. A Saudi Arabian minister was recently in the U.S. exploring American investment in a Saudi development plan. In an interview, he made it clear that investors would have to make boycott declarations and certifications, thereby excluding the 1,500 American companies on the blacklist and undoubtedly widening the number of companies which will feel constrained to avoid business with Israel. The Commerce

Department estimates that Arab-American trade, which amounted to $5.5 billion in 1975, is likely to double by 1980. Action is urgently required before large segments of American industry are divided into two groups, each one excluded from the other's Mideast market.

BOYCOTT AS EXTORTION

It is important to point out that the Arab boycott is not an iron-clad and impermeable structure. Indeed, the many leaks in the boycott create an evil of their own in that they have created a new cottage industry based on evading the boycott or getting off the boycott list.

There is no single boycott list. Although there is a coordinating body based in Damascus which has power to recommend addition or deletion from the blacklist, each of 20 Arab countries and the Arab League itself has its own blacklist with its own wrinkles. The situation is further complicated by the length and complexity of the boycott regulations which contain 100 pages of detailed rules. Finally, confusion is guaranteed by the secrecy surrounding the list and the regulations. The boycott office has refused to make available copies of either. The only published versions, dated 1970 and 1972 respectively, were first made public in February 1975 by the Senate Subcommittee on Multinational Corporations.

The nature of the boycott as a capricious and extortionist device is clear from the reactions of some American companies to the discovery that they were on the 1970 Saudi Arabia list. A spokesman for the Hertz system, which has licensed auto rental outlets in both Israel and Egypt, declared: "We are puzzled to find ourselves listed. From time to time we get applications from parties in Arab lands for licenses." The chairman of Lord & Taylor department store chain said that he first learned of the blacklist in 1971 when a shipment of goods was impounded in Saudi Arabia. "Se we know we are on the list," he said. "But we don't know why, never having been told." A Burlington Industries spokesman noted, "I did not know we were on any blacklist and don't know why we should be. We are shocked to hear it. We do business with both Israel and the Arab world—far more business in the Arab world, in fact." The Republic Steel Corporation observed that it had been put on the list "although we have neither any investments or interest in the Mideast." American Electric Power Co. spokesmen were similarly bewildered as to their company's appearance on the list.

Those companies which could ascribe reasons to their being blacklisted disclosed a catalogue of capricious and arbitrary actions by Arab boycott administrators. Xerox Corp. attributed blacklisting to a documentary on Israel sponsored in 1966. Coca-Cola was on because it granted a franchise to an Israeli bottling company in the mid-1960's. Sears, Roebuck & Co. said its inclusion was due to the mistaken impression that a British company, Sears Holding, Ltd., was in some way an affiliate. It is not. General Tire and Rubber appeared because a subsidiary, since sold, once had a service arrangement with an Israeli company.

Fortune magazine has noted that dozens of firms listed cannot be found and some no longer exist. A spokesman for Laurance Rockefeller speculated that Laurance Rockefeller Associates (which never existed) is mentioned because Rockefeller and a few colleagues once had a minor interest in Elron Electronics Industries, an Israel company, which they sold in 1967.

The experience of American companies in trying to get their names off or keeping their names off the blacklist throws a different cast upon the nature of the boycott. Instead of being a weapon in the war against Israel, the boycott appears more as a means of extorting bribes and additional business from U.S. concerns. Earlier this year, the SEC accused General Tire and Rubber Co. of failing to disclose that it had paid $150,000 to a Saudi Arabian to get its name off the boycott list. The alleged recipient was none other than Adnan Khashoggi, the same individual who has been implicated in other Mideast commissions. General Tire subsequently agreed to a court injunction barring future violations.

Bulova had a similar experience. Despite having no dealings in the Middle East apart from its watches being on sale at duty free shops, Bulova was placed on the blacklist. Later a Syrian lawyer approached the company and offered for a retainer to get its name removed. Unfortunately, the lawyer was executed in a Damascus public hanging before he could fulfill his promise.

Undoubtedly other American companies have been forced to resort to similar payoffs to get themselves off the blacklist. But the usual method of negotiation to expunge a name or keep it off is somewhat subtler. What appears to be required is a willingness to make an appropriate contribution to the economies of the Arab world. Sometimes the contribution reportedly can be a strict *quid pro quo*. Secretary Simon testified to this extortionist arrangement before the committee.

Hence, Xerox is negotiating to have its name stricken. The documentary film about Israel which prompted the blacklisting cost the company $230,000 to produce. Xerox has been told that an investment of a like amount in an Arab state would suffice for delisting. Ford Motor Co. is talking with the Egyptians about a similar arrangement—assembling in Egypt automobiles to offset the 5,000 Ford cars annually produced by an Israeli concern. The New York Times reported that Sony was approached with a like arrangement—an electronics enterprise in an Arab country to "compensate" for one in Israel.

Sometimes exceptions are made without explicit agreement due to the bargaining position of the American concern. Hence, defense contractors such as McDonnell Douglas, United Aircraft, General Electric, Hughes Aircraft, and Texaco do business in both Israel and the Arab States without any apparent boycott interference. This is also true of Hilton and IBM. But how many smaller American exporters or manufacturers can afford to enter into similar agreements with the Arabs? And why should they be forced to submit to such extortion which is a violation of express U.S. policy?

According to recent indications, this bribery may become even more widespread. An article by the Arab Press Service cites pressures on the Central Boycott Office being exerted by individual Arab States to allow multinational companies to buy their way off the blacklist by making investments twice the size of their investments in Israel. This would institutionalize the current informal extortion and bribery which characterizes the listing and delisting process.

TERTIARY BOYCOTT

Thus far I have dealt with the direct impact of the boycott on American firms—the so-called secondary boycott. I would like now to turn to an aspect of the boycott which has occasionally been called the tertiary boycott—the discrimination of certain American firms against other American and European firms under pressure from Arab States. This form of compliance with the boycott is illustrated by the following examples:

According to the testimony of SEC Chairman Hills before my subcommittee, a "$30–40 million American company" interested in receiving Arab investments felt compelled to end its sizeable account with an American investment banking firm because of the latter firm's close relations with Israel.

A U.S. bus manufacturer had its contract to sell buses to an Arab state terminated when it was learned that the seats were to be made by an American company on the blacklist.

Two American investment banking firms were disciplined by the National Association of Security Dealers (NASD) for violating that organization's rules of fair practice in substituting non-blacklisted affiliates for blacklisted firms in underwritings with Arab participation.

Bechtel Corp. was sued by the Justice Department for violating the Sherman (antitrust) Act in refusing to deal with blacklisted American subcontractors and requiring American subcontractors to refuse to deal with blacklisted persons or entities.

As the last example makes clear, there are many who feel that this so-called tertiary boycott, that is, American firms discriminating against American firms, violates the antitrust laws which outlaw conspiracies in restraint of trade. President Ford apparently shares that opinion. In a thoughtful and innovative statement made on November 20, 1975, he clarified his Administration's position on the boycott and modified agency practice to outlaw compliance with the religious and racial, but not economic, aspects of the boycott. As part of his address, he remarked:

> The Department of Justice advises me that the refusal of an American firm to deal with another American firm in order to comply with a restrictive trade practice by a foreign country raises serious questions under the U.S. antitrust laws.

Other commentators suggest that the antitrust laws extend even to the secondary boycott where an American firm refuses to deal with Israel in compliance with boycott pressures.

I welcome and commend the actions of the President and the Justice Department in this regard. I share their conclusions about the applicability of the antitrust laws at least to the tertiary boycott. But we all know that actions through the courts to enforce the antitrust laws can be extremely lengthy, time-consuming and unpredictable. Bechtel has raised numerous defenses to the lawsuit including the undisputed fact that the U.S. government at times has encouraged trade with Arab League countries knowing that boycott compliance was a commercial requirement and that an alleged exemption from the antitrust laws for foreign acts of state may be applicable. According to the San

Francisco Examiner, Bechtel itself is apparently continuing to bow to blacklist pressures and has circulated letters to its subcontractors stating that Israeli goods or materials shipped on blacklisted vessels could not be used in a $20 billion seaport construction project in Saudi Arabia. Enforcement of the antitrust laws, while laudable, is therefore not the most expeditious or effective means of ending this boycott of American businesses.

UN-AMERICAN PRESSURES

I have so far addressed myself to the economic aspects of the boycott. There is another side. Few people seriously maintain that the boycott is not also anti-Jewish. Senate investigators and others have uncovered numerous instances where American individuals or companies were apparently denied business with Arab States solely because they or their officers, employees or shareholders were Jewish. Two colonels in the Army Corps of Engineers admitted to a Senate subcommittee that the Corps had given in to Arab pressure to exclude Jewish personnel from projects in Saudi Arabia. They admitted that private U.S. companies were subject to the same anti-Jewish requirement. I will not, however, dwell on this important aspect of the boycott because I feel it has been well-documented and is the subject of the executive memorandum dated November 20, 1976. I wish only to say that the illegality of such discrimination based on religion, national origin, sex or race should be clarified and expanded to all American companies as this bill does.

DENUNCIATIONS OF THE ECONOMIC BOYCOTT

Many American businesses have joined in the denunciation of the Arab boycott which has put them in the unconscionable position of having to refuse to do business with an ally and major trading partner of the United States—Israel—in return for business from the Arab world. They urge the passage of legislation such as this which, once and for all, will enable, indeed require, them to turn down such requests. Among the American firms reported taking this position are General Mills, Bausch and Lomb, Pillsbury, First National Bank of Chicago, Northwestern National Bank of Minneapolis, Provident National Bank of Philadelphia and the Marine National Exchange Bank of Milwaukee. I think it is fair to say that these sentiments are shared by large segments of the American business community.

Important federal officials have also urged strong Congressional action to end the discriminatory impact on American business of boycott compliance. Principal among these has been Chairman Arthur Burns of the Federal Reserve Board who in a letter to my subcommittee dated June 3 stated:

> The time has come for Congress to determine whether it is meaningful or sufficient merely to 'encourage and request' U.S. banks not to give effect to the boycott. It is unjust, I believe, to expect some banks to suffer competitive penalties for responding affirmatively to the spirit of U.S. policy, while others profit by ignoring this policy. This inequity can be cured if Congress will act decisively on the subject.

CURRENT LAW

To place in perspective the changes embodied in this bill, let me summarize the present provisions of the Export Administration Act which pertain to the boycott and some other statutory weapons against the boycott which have unfortunately not proven wholly effective.

There are three sections of the current Export Administration Act relating to the boycott. The first, section 3(5), declares in effect that it is U.S. policy to oppose boycotts imposed by foreign countries against countries friendly to the U.S. A second provision requires companies to report to the Commerce Department all requests for boycott compliance. In December 1975, the Department announced it had fined four companies and warned 212 others for failure to report boycott requests properly. Tightened Department regulations now extend these reporting requirements to banks, insurers, freight forwarders, shipping companies and other businesses that serve exporters, and include the obligation to report whether or not they plan to go along with boycott requests. Moreover, Department regulations outlaw compliance with boycott requests which involve discrimination against Americans based upon their race, color, religion, sex or national origin. These prohibitions are widely known.

There is, however, a third provision of the Export Administration Act which, if enforced, would obviate having to strengthen the Act to protect American concerns from the boycott. This is section 4(b)(1) of the act which gives the President the power to "effectuate the policies set forth in section 3" (including the antiboycott policies) through limiting export privileges and imposing other unspecified sanctions against related service companies which act contrary to these stated policies. In a letter to the Government Operations Subcommittee, then Commerce Secretary Rogers Morton admitted that this language was the only authority he needed to outlaw all compliance with the boycott. Unfortunately, neither he nor his successor has seen fit to use this power despite the clear Congressional intent that it be used.

Other laws or regulations which apply to the Arab boycott include the following:

> The Sherman Act outlaws contracts, combinations or conspiracies in restraint of trade. According to the Justice Department (in the Bechtel suit), an agreement not to do business with American companies that deal with Israel would almost certainly be a violation. An American company's promise not to trade with Israel may also be a violation.
>
> The Securities Exchange Act of 1934 requires the disclosure of information which could have a material impact upon a public company. SEC Chairman Hills in testimony before my subcommittee, suggested that compliance with the boycott might have to be disclosed where the company's business or the market value of its shares would be affected by such disclosure as where customers of a bank might be concerned that such bank was aiding the Arab cause.
>
> In their duty to oversee the privileges and benefits of the banking community and to prevent unsafe or unsound practices, the federal bank regulatory agencies have outlawed religious dis-

crimination in accepting deposits, investing or lending. Chairman Burns of the Federal Reserve Board even suggested that processing letters of credit with boycott stipulations violated banks' Federal responsibilities.

Pursuant to the far-reaching Presidential statement of November 20, a number of departments and agencies have issued orders or regulations barring any boycott-related discrimination based upon religion, race or national origin.

Legislation embodying the principles of the Presidential directive has been passed in Illinois, New York, Maryland, and Massachusetts. These States, as well as Pennsylvania, where similar legislation is under active consideration, are bearing the burden of the belated, piecemeal and insufficient federal action against the boycott.

Let me summarize the current legal status of the boycott. The Export Administration Act declares the furtherance or support of the Arab blacklist to be against U.S. policy. Companies must report all boycott requests. They are prohibited from complying with any boycott request which furthers or supports discrimination against U.S. citizens or firms on the bases of race, color, religion, sex or national origin. They also may be forbidden from discriminating against other U.S. firms, although the Justice Department acknowledges that a foreign boycott has never been held to violate the Sherman Act.

Thus, U.S. law already appears to outlaw the anti-Jewish features of the boycott as well as the so-called tertiary economic aspects of the boycott. But these prohibitions are embodied in the first instance in regulations based solely on U.S. "policy" and in the second instance on an antitrust statute only first being applied in a test case. Moreover, no U.S. law is addressed to the most pervasive, sinister and direct symptom of the boycott—the blacklisting of 1,500 American firms and individuals. It must be made clear, as this bill does, that no foreign nation can involve innocent American businesses in its warfare against a nation friendly to the U.S.

PROJECTED IMPACT OF THIS BILL

Concern has been expressed in some quarters that outlawing compliance with the boycott may adversely affect U.S. trade and diplomatic relations with the Arab world. I would be naive if I did not admit some risk in the course of action pursued by this committee. There could be some short-term diversion of trade to other European countries or Japan as the Arabs express anger that their scheme no longer enjoys tacit, if not explicit, American support. But there are several grounds for optimism that the disruption of trade would be neither severe nor long-term.

First, the long-standing and generally amicable commercial relations between this country and the Arabs have survived earlier political vicissitudes. Iraq currently offers a fine example where radical rhetoric and divergent political philosophies have not interfered with a thriving American business relationship. The Arabs have become used to the high quality goods and services which only this nation can provide in such abundance. Any major shift in commercial dealings would, I believe, work an unacceptable hardship upon the Arab business community and its customers.

Second, numerous Arab businessmen have expressed private misgivings about the operation of the boycott. They feel it unnecessarily restricts their dealings with blacklisted companies. It also alienates executives of other companies who resent being questioned about their company's business relations or who find it morally repugnant. No fewer than 22 large American firms have recently pledged not to comply with Arab boycott demands. These include American Brands, Beatrice Foods, El Paso Natural Gas, General Motors, Greyhound, Kennecott Copper, G. D. Searle, Texaco, Textron, and U.S. Gypsum. Typical of this pledge was that of the Chairman of General Motors, T. A. Murphy, who said:

> General Motors has received occasional requests from Arab countries that it agree not to participate in future dealings with Israel or with Israeli companies . . . General Motors has made no such agreements and would not make any such agreements.

Third, Arab companies have demonstrated in past dealings that an objection to a boycott request would not necessarily lead to a termination of relations. When the Commerce Department in November 1975 outlawed compliance with requests involving discrimination on ethnic or religious grounds, banks were forced to reject letters of credit containing objectionable language. Morgan Guaranty testified before my subcommittee that in 23 of the 24 instances where the bank refused to process such letters of credit the offensive boycott language was voluntarily stricken by the Arab or other foreign banks involved. There is considerable reason to believe that Arab countries would waive boycott conditions rather than deprive themselves of vital American goods and services.

Fourth, it is by no means clear that all European and developed countries would welcome compliance with the Arab boycott as a price for additional Arab trade. Indeed, some developed countries appear to have taken a harder line against boycott compliance than the United States.

Germany offers a fine example. It is Israel's largest trading partner after the United States. It is also the principal competitor of the United States in the sale of high technology equipment and services to the Arabs. Yet German industry has vigorously opposed compliance with Arab boycott conditions. There are virtually no reported instances of German acquiescence in boycott demands. Indeed as recently as March, the Hamburg Chamber of Commerce labelled the Arab boycott as a "particularly grotesque strain of discrimination against freedom of trade." Since 1965, West German chambers of commerce have refused to validate all so-called negative certificates of origin, i.e., declarations that goods are not of Israeli origin. This position has the support of almost all German business organizations. This resolve has evidently been successful since Bonn's Economic Ministry claims to have no record of any export contract breach resulting from this refusal to validate boycott documents. Although there are reportedly 200 German firms on the Arab blacklist, many businesses maintain parallel links with the Israelis and the Arabs.

One highly publicized instance of German resistance to boycott pressures involves a recent license granted by Volkswagen to an Israel firm for the production of the Wankel rotary engine. The Arab

Boycott Committee had responded by threatening to place VW on the blacklist. VW refused to withdraw the license and to the best of my knowledge maintains its opposition to any Arab dictation related to its substantial Israeli trade.

The Common Market has also been outspoken in its opposition to the Arab boycott. Article 85 of the Treaty of Rome establishing the EEC prohibits "the conclusion of contracts subject to acceptance by other parties of supplementary obligations which . . . have no connection with the subject of such contracts." In trade agreements concluded or being negotiated with Arab states, the EEC is insisting upon insertion of clauses outlawing discrimination among nationals, companies, or firms of the Common Market. While the Arab signators, including Tunisia, Egypt, Lebanon, Morocco and Algeria, have issued reservations against these clauses, the EEC has informed Egypt that it considers a proper respect for the non-discrimination clause essential to the full implementation of the trade agreement. As one member of the EEC Commission put it "The Commission considers [that] Arab discriminatory boycott measures are contrary to the principles of cooperation which the community wishes to establish with the Arab countries. . . ."

The British position on the boycott was expressed in November 1975 by the then Secretary of State for Trade, Peter Shore, as follows: "This Government deplores and is opposed to any boycott that lacks international support and authority." In a celebrated case last winter, the British Foreign Office Race Relations Board required Gulf Oil Co., to award compensation and to reinstate a secretary whose promotion had been withdrawn when Gulf had discovered that she had married a Jew. British efforts directed against the boycott are coordinated by a committee composed of numerous influential businessmen and civic leaders. They are in the process of developing and promoting legislation which would outlaw all compliance with the boycott.

Other examples of European opposition to the boycott include the Dutch government's prohibiting notaries from validating boycott documents and the adoption of Article 15 of the Convention establishing the European Free Trade Association, which prohibits "concerted practices between enterprises which have as their object or result in the prevention, restriction or distortion of competition within the area of the Association." The former law has not prevented widespread and growing relations between Dutch industry and the Arabs. According to press reports, Saudi Arabia has recently placed huge orders with Dutch firms for the construction of harbors in Dammam and Jubail and for the expansion of the Saudi telephone system. Moreover, Egypt is expected to place an important order for construction of ships in Dutch shipyards.

In Canada, the 1975 amendments to the Combines Investigation Act forbid conspiracies to restrict competition. Parties to an agreement which reduces competition in Canada are subject to criminal prosecution.

The impression I and my staff gather from numerous conversations with foreign diplomatic officials is that the Arab boycott is a matter of great concern to other developed countries. Representatives of countries which have not outlawed compliance with the boycott expressed considerable interest in the prospect that a strong American initiative might prompt their countries to do likewise.

The above analysis should lay to rest the speculations of those who fear that U.S. opposition to the boycott would send the Arabs into the arms of a welcome and compliant Europe. Indeed should some developed countries be slow to follow the American lead, the United States is not without recourse. The General Agreement on Tariffs and Trade (GATT) to which not only developed countries but even Egypt and Kuwait are parties almost certainly forbids the imposition of discriminatory boycotts such as the Arabs' against third parties to a conflict. As long as the United States submitted to boycott pressures, it was naturally reluctant to raise these prohibitions with other developed countries. This reluctance should end with the passage of strong domestic anti-boycott legislation such as this.

While no one can predict to a certainty the impact on United States/Arab trade relations of anti-boycott legislation, the evidence suggests any trade diversion would be small and short-lived. The Arabs are highly unlikely to allow enforcement of a secondary boycott to interfere with their long-term development plans, and they are not going to find that other developed countries are substantially more willing than the United States over the long run to tolerate such discriminatory and anti-competitive practices.

These supplemental views are long but I feel compelled to make the strongest possible case for the prompt and favorable consideration of this bill. Our nation must no longer acquiesce in the shameful, extortionist pressures of the Arab blacklist which offend American principles of free trade and fair play and which are having a destructive, divisive and anticompetitive effect upon American business.

BENJAMIN S. ROSENTHAL.

ADDITIONAL VIEWS OF HON. PAUL FINDLEY ON THE ANTI-ARAB BOYCOTT

The language in this bill known as the Bingham-Rosenthal amendment, which seeks to thwart the Arab boycott arises, I am sure, from the best of motivation, but I fear will hurt the very cause it seeks to advance.

Those injured by a boycott naturally consider such a device immoral. But a far more dreadful injury will occur if progress toward a peaceful and permanent settlement of vexing issues in the Middle East is reversed.

The United States, long and properly a devoted friend of Israel, has made great progress in establishing cordial relations with Arab capitals and has employed that relationship to reduce tension on several fronts. To the extent that Arabs perceive the United States as hostile or even just inconsiderate to their own problems and interests, this prospect of effective U.S. leadership is destroyed. Arab states will certainly consider this exceedingly-rigid provision amendment hostile to their purposes.

Sponsors of the anti-boycott amendment in committee candidly admitted it will not end the boycott. What will it do? Most likely, it will tend to put the United States at odds with Arab nations, make more difficult the survival of moderate leadership there, and in the long term hurt the noble long term goal of fair play and human decency.

It should be stricken from the bill.

PAUL FINDLEY.

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